

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

Complaint no. :	1692 of 2018
Date of filing complaint:	13.11.2018
First date of hearing:	05.12.2019
Date of decision :	01.08.2022

1. Rajiv Shukla		Complainants
2. Shivani Kapoor Both R/o: B-147, Lajpat Nagar-I, New Delhi-110024		
Versus		
1. M/s Godrej Properties Limited. Registered office at: Godrej One, 5th Floor, Pirojsha Nagar Eastern Express Highway, Vikhroli (East), Mumbai-400079 Maharashtra		Respondents
2. M/s Oasis Landmarks LLP Registered office at: Godrej One, 5th Floor, Pirojsha Nagar Eastern Express Highway, Vikhroli (East), Mumbai-400079 Maharashtra		

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Dr. Sham Taneja (Advocate)	Complainants
Sh. Kapil Madan (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Godrej Icon", Sector 89A/88A, Gurugram
2.	Project area	13.759 acres
3.	Nature of the project	Group Housing Residential Project
4.	DTCP license no. and validity status	85 of 2013 dated 10.10.2013 and valid up to 09.10.2024
5.	RERA Registered/ not registered	Registered 50 of 2017 dated 12.08.2017
	RERA Registration valid up to	31.12.2020

6.	Unit no.	502, 5th floor, Tower C [Page 56 of the complaint]
7.	Unit measuring	1779 sq. ft. [Page 56 of the complaint]
8.	Application date	17.04.2015 Page 51 of the complaint
9.	Date of provisional allotment letter	30.10.2015 [Page 125 of the reply]
10.	Date of execution of builder buyer agreement	BBA has not been executed
11.	Possession clause	16. The developer shall endeavour to complete the construction of the apartment within 48 months (for icon apartments)/ 46 months (for other tower's apartments) from the date of issuance of allotment letter alongwith a grace period of 6 months over and above this 48 months period. [Page 62 of the complaint as per application form]
12.	Due date of delivery of possession	30.04.2020 Calculated from the date of allotment letter i.e. 30.10.2015 Grace period of 6 months is allowed
13.	Total sale consideration	Rs.1,37,27,436/- [Page 128 of the reply]
14.	Total amount paid by the complainants	Rs. 28,81,876/- [As per statement of account dated 30.06.2018 at page 139 of the reply]
15.	Payment plan	Construction linked payment plan [Page 123 of the complaint]
16.	Offer of possession	Not offered
17.	Reminder letter	25.11.2016 [Page 141 of the reply]

18.	Pre-termination letter	14.11.2016 [Page 143 of the reply]
19.	Cancellation notice	29.06.2018 [Page 144 of the reply]
20.	Occupation Certificate	01.04.2019 [As per the details mentioned on the website of DTCP]

B. Facts of the complaint:

3. On 17.04.2015, the respondent no. 1 through its representative got collected the cheque, as booking / earnest amount of Rs. 5 lakhs vide cheque no. '000035' drawn in favour of 'Godrej Icon' for a flat ad measuring 1779 sq. ft. at rate of 5999/- per sq. ft. equals to Rs. 1,06,72,221/-. The application form was also got signed from the applicants. Evidently, the cheques were taken in the name of Godrej to cement the belief in the mind of customer that it is a project by Godrej Properties Ltd. Since no receipt for the aforesaid amount was sent nor there was any communication for 3-4 months, the complainants contacted the respondents and asked for the receipt.
4. Thus, vide email dated 14.08.2015 sought the details of the entity 'Oasis landmark' and its relationship with Godrej. In response, the respondent no. 1 vides its email dated 21.08.2015 tried to cover up and misled that Oasis Landmarks LLP is only a billing entity and Godrej is in profit sharing agreement with Oasis Build home (LLP). This further aggravated the confusion and the complainants vide email dated 22.08.2015 requested to show the relevant

- records/documents for the same to ascertain the entity with which he was investing his money.
5. That the complainants in order to satisfy himself about the veracity of the claims made by the respondents, sought to check the records, agreements between Godrej and Oasis Build home Pvt. Ltd. and the LLP agreement/partnership deed/admission deed. Even till date the agreement has not been produced by the respondents.
 6. That the respondents without making any records/documents available, further pressurized the complainants for further payments and as such under pressure, a further payment of Rs 23,81,897/- through cheques was given on 07.09.2015 and 15.10.2015. That it is pertinent to mention here that the complainants were pressurized to deposit more than 20% of cost of property without signing of builder buyer agreement.
 7. The provisional allotment letter dated 30.10.2015 for apartment no. C0502 on 5th floor in Tower C in the Group Housing residential project "Godrej Icon" situated at Sector 88A and Sector 89A, Gurgaon, was issued by the respondent no. 2 in terms of which BBA was to be signed between the parties. The complainants continued to send reminders (inter alia via emails dated 11.07.2016, 30-10-2017, 1-11-2017, 26-12-2017) and requests over the phone to make available the records showing the relation between the respondents no.1 and 2. Since no BBA was got executed by the developer respondent no. 1. No BBA was

ever sent by the respondents nor was received by the complainants.

8. It is pertinent to mention state here that vide email dated 18.01.2017 the respondents wrongly stated that the BBA was sent on 27.12.2016 which was immediately denied by a revert email since no such BBA was received by the complainants. However, no BBA was sent by the respondents. It is further submitted that the lie/falsehood of sending BBA to the complainants is evident from 3 different reported dates as purported of sending the BBA for signatures to the complainants.
9. The complainants had a meeting at respondent no. 1 office at Gurgaon on 01-11-2017 with Mr. Debashish Barua and Ms. Surbhi Kapoor representing respondents and for the first time was shown the draft BBA. The complainants documented their concern via email dated 01-11-17 raising serious issue inter alia that despite repeated requests for relevant records including agreements between the respondents, were not provided and none of the amenities like helipad and skywalk found mention in the draft agreement which was shown in meeting for the first time. Thus, the complainants requested Mr. Debashish that incase these amenities are not to be mentioned in agreement by respondents, then the complete amount deposited must be refunded along with interest. The representative of respondents no. 1 assured the complainants that he would revert after discussing with his senior management. After much delay, only after reminder from complainants, the respondents vide e-mail

dated 29.12.2017 the respondent no. 1 refused to commit in writing on the pretext that it has standard format and cannot be deviated. During discussions also, the request for refund was again made.

10. That the complainants received 2 letters dated 16.05.2018 and 06.06.2018, from the respondent no. 2 inter alia mentioning that they intend to revise the building plan with respect to the project herein and also for change of developer and were seeking no objections on the same. However, the complainants on receiving the said letter filed their written objections in pursuance of the aforesaid letter to DTCP, Gurugram and also attended a meeting at the DTCP office in Gurugram to further voice their objection.
11. The respondents, on being angered by the complainants filing of objections and attending the meeting before DTCP, as stated herein above, illegally issued a letter dated 29-06-2018 received some time in 1st week of July 2018, illegally cancelling the allotment and forfeiting the amounts of Rs. 28,81,876.20/- deposited by the complainants.
12. The memo of approval dated 03.10.2018 bearing memo no. ZP-959/AD(RA)/2018/28303 filed by the respondents showing that the respondents had applied for changes in lay out design so belatedly and for construction of new building tower only after RERA Act vide letter dated 03.01.2018 and 27.03.2018, without taking previous written consent of 2/3rd allottees (S.14 & 15). Further the complainants had filed the RTI before DTCP and in response received from DTCP to RTI application form, shows the

name of developer Oasis Build home Pvt. Ltd. had applied not respondent no. 1 or 2.

13. That the complainants, upon being completely harassed by the respondents found another project in Delhi for his residence and had decided to put in his investment there. That complainants realised that they have been cheated by the respondent no. 1 to 3, the complainants dream of owning a residence had got derailed and had to take a loan of Rs. 1 Crore from HDFC Bank on 28.03.2019 due to money being locked by the respondents.
14. After the aforesaid order dated 24.01.2022 The complainants also filed an application dated 26.04.2022 for listing the present pending matter before the Hon'ble Authority, RERA Gurugram for final hearing along with the other matters relating to the same builders i.e. Oasis Landmark LLP.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):
 - i. Direct the respondents to refund the amount of Rs. 28,81,876/-along with prevalent rate of interest from the respective dates of deposit till the actual realization.
 - ii. Compensation of Rs. 10 lacs for causing mental harassment and loss of money to buy residence after taking loan from HDFC bank as huge amount of about Rs. 29 lakhs were lying blocked since 2015 with respondents.

D. Reply by respondents:

16. It is submitted that the aforesaid project is being developed by the respondents as per the development agreement dated 22.12.2014 entered with Oasis Build home Pvt Ltd. Further, the answering respondents has launched two projects namely 'Godrej Icon' and 'Godrej Oasis' on the licensed land a fact that was also stated in the application form. It is submitted that all the approvals for the licensed land were obtained in the name of Oasis Build home Pvt ltd.
17. By way of a background, it is submitted that the complainants booked an apartment with Oasis Landmark LLP in its project namely Godrej Icon situated at Sector 88A and 89A vide an application form dated 17.04.2015. The respondents allotted an apartment no. 502 on the fifth floor in Tower C, whereby the complainants have issued a cheque bearing no. "000035" dated 17.04.2015 for a sum of Rs. 5,00,000/- drawn in favour of Godrej Icon as the initial booking amount. The total consideration of the apartment was Rs. 1,43,40,068/- (excluding taxes) wherein the complainants opted for a construction linked payment plan.
18. It may not be out of place to mention here that the project is being developed by Oasis Landmark LLP was communicated to the complainants at the time of making the application form itself. Further, It is submitted that in fact the application form was addressed to Oasis Landmark LLP, allotment letter and invoices were issued by Oasis Landmark LLP. It is submitted that the respondents have entered into a development agreement with the landowner i.e. Oasis build Home Pvt Ltd. It is submitted that

nothing in the BBA was arbitrary or contrary to the provisions of RERA. it is reiterated vide an email dated 04.05.2018 communicated that the respondents will specifically be mentioned about the skywalk and the helipad. It is most vehemently denied that the respondent no. 1 suppressed and avoided to share vital documents i.e. agreements between the entities- respondent no. 1 to 3, approvals obtained and the partnership deed of respondent no. 2 etc. It is further reiterated that from the very inception the respondents have informed the complainants that the project is being developed by Oasis landmark LLP where Godrej Properties Ltd is a partner.

19. It is admitted that the respondents have sent two letters vide dated 16.05.2018 and 06.06.2018 to the complainants concerning the revision in building plan vide memo no. LC-2751-PA (SN) 2018/13746 dated 03.05.2018 from the DTCP for the change in developer. It is reiterated that Oasis Build home Private Limited entered into a development agreement with Oasis Landmark LLP on 22.09.2014. Pursuant to which, Oasis Landmark LLP (wherein Godrej Properties Limited is a partner) is entitled to undertake the development of a group housing project "Godrej Icon". Later, Director General, Town & Country Planning, Haryana ("DTCP") vide its policy dated 18.02.2015 bearing Memo No. PF-51N2015/2708 post facto directed the land owners and developers to comply with the policy parameters in the event of change in developer. Accordingly, an application with DTCP for change of developer in favour of Oasis Landmark LLP and have

subsequently received an in-principle approval bearing memo no. LC-2751-PA(SN) 2018/13476 dated 05.05.2018. Further, with regard to change in the building plan, it is submitted that the building plans are being revised in consonance and compliance with applicable laws and as such, we have been duly granted in-principle approval for change in building plan by DTCP on 12.04.2018. By way of background, it is submitted that an additional license for land parcel of 0.925 acres was granted by DTCP vide license no. 151/2014 dated 05.09.2014. Consequently, there were certain changes brought in the original layout of the project and a revised building plan approval was taken incorporating the said changes. Letter dated 16.05.2018 written to the customer seeking its no objection for the said change in the approved building plan clearly mentions the changes which are being carried out. Even a public notice was published in leading newspapers. It is apposite to mention here that there is no change in the tower 8 (C as per approval) in which the unit allotted to the complainants are situated. It is reiterated that the aforesaid change in no manner impacts the unit allotted to the complainants. The changes are being undertaken on such portions which were earmarked for future development and on the portion of land which is merged in the total lands by way of additional license bearing no 151 of 2014 granted by DTCP.

20. The respondents thereafter issued an allotment letter dated 30.10.2015 and confirming the allotment of the unit to the complainants.

21. It is pertinent to mention here that, the application form dated 17.04.2015, the allotment letter dated 30.10.2015 clearly stipulated and defined earnest money to be 20% of the cost ("Earnest Money") which was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the buyer. It is submitted that the agreed earnest money for the said apartment was Rs.28,68,000/-. The committed delivery date for the apartment was 01.03.2020 as per clause 16 of the application form.
22. It is submitted that thereafter the respondents carried out with the construction of the project at a considerable speed and raised invoice dated 30.06.2016 on completion of super structure and an invoice dated 06.01.107 on completion of finishing work.
23. The complainants in complete disregard of its contractual obligations failed to make timely payments contrary to the assurances made by the complainants. The respondents thereafter issued several request and reminder letters dated 08.07.2016, 04.08.2016, 27.09.2016, 14.11.2016, 26.10.2017 to the complainants.
24. It is submitted that the complainants have failed to make timely payments towards the construction linked invoices. It is submitted that the complainants had defaulted making payment from the 2nd instalment itself as there was a delay of 55 days in making such payments. As on 30.06.2018, a sum of Rs. 86,82,552/- is due towards the principal outstanding. Further a sum of Rs. 16,53,106/- is outstanding interest.

25. It is submitted that at once instance, the complainants were making continuous defaults in making timely payments, on the other hand, the complainants also failed to execute the builder buyer's agreement. The respondents accordingly issued a letter dated 25.11.2016 requesting the complainants to send an executed copy of the BBA.
26. Though the agreement was duly sent to the complainants, the respondents vide an email dated 01.11.2017 informed the complainants to execute an indemnity in case the agreement is lost.
27. It is most vehemently denied that the respondents ruffled by the complainants filing of the objection, illegally issued a letter dated 29.06.2018 cancelled the allotment and forfeited the amount of Rs. 28,81,876.20/- deposited by the complainants. It is reiterated that it is the complainants who has committed a material breach by not making the payment as per the agreed timelines. The respondents thereafter issued several request and reminder letters dated 08.07.2016, 05.08.2016, 28.09.2016, 15.11.2016, 26.10.2017 to the complainants. It is submitted that the respondents were constrained to terminate the unit as the complainants failed to make the payment as per the agreed timelines despite several reminders. It is reiterated that it is the complainants who failed to execute the BBA.
28. It is submitted that thereafter the respondents were constrained to issue a pre-termination notice dated 14.11.2016. thereafter, the respondents were constrained to terminate the booking vide a

letter dated 29.06.2018. The complainants have filed the present complaint with a dishonest intent which is evident from a bare perusal of the email dated 01.11.2017 wherein the complainants were asking for further discounts.

29. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

30. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings regarding relief sought by the complainants:

F.1 Direct the respondents to refund the amount of Rs. 28,81,876/- along with prevalent rate of interest from the respective dates of deposit till the actual realization.

31. The complainants were allotted unit no. 502 on 5th floor in Tower C in the project "Godrej Icon" by the respondent's builder for a total consideration of Rs. 1,37,27,436/ - under the construction linked payment plan on page 128 of the reply. After the allotment letter was issued on 30.10.2015, the respondents builder continued to receive the payments against the allotted unit. It has

brought on record that the complainants had deposited several amounts against the allotted unit and paid a sum of Rs. 28,81,876/- as per statement of account dated 30.06.2018 at page 139 of the reply. It is to be noted that reminder dated 25.11.2016 was raised in respect of payment of outstanding dues.

That the complainants did not come forward to clear their dues and take possession, due to which the respondents were left with no option but to issue pre termination letter dated 14.11.2016 and further cancellation was issued to the complainants on 29.06.2018

On consideration of the documents available on record and submission by both the parties, the authority is of the view that the allottee has failed to abide by the terms of agreement by not making the payments in timely manner as per the payment plan opted by him. The complainants failed to pay the remaining amount as per the schedule of payment.

Now the question before the authority is whether this cancellation is valid?

As per the terms and conditions of application form and allotment letter, the allottee was liable to pay the timely instalment as per payment plan opted by the complainants.

As per clause 15 of terms and conditions of application form dated 17.04.2015 as well as allotment letter dated 30.10.2015, that an amount equivalent to 20% of basic sale price shall be treated as earnest money.

The respondents have obtained occupation certificate from the competent authority on 01.04.2019 but no offer of possession has been made. The respondents have given ample opportunities by way of demand letters/ notices to complainants and thereafter when the complainants did not come forward to pay the outstanding amount, the respondents cancelled the unit allotted to the complainants with adequate notices. Thus, the cancellation of unit is valid.

Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

Keeping in view the aforesaid legal provisions, the respondents are directed to refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram within 90 days from the date of this order alongwith interest @ 9.80% p.a.

on the refundable amount from the date of cancellation i.e. 29.06.2018 till the date of its payment.

F.2 Compensation/Legal expenses:

The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority:

32. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondents-promoters are directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation



Haryana Real Estate Regulatory Authority Gurugram
(Forfeiture of earnest money by the builder)
Regulations, 2018 within 90 days from the date of this
order along with an interest @ 9.80% p.a. on the
refundable amount, from the date of cancellation i.e.
29.06.2018 till the date of realization of payment

- ii. A period of 90 days is given to the respondents to
comply with the directions given in this order and
failing which legal consequences would follow.

33. Complaint stands disposed of.

34. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2022

HARERA
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