

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

Complaint No. : 513 of 2018
Date of first hearing : 06.12.2018
Date of Decision : 24.04.2019

Vastuvidha (India) LLP
R/o-C-27, Defence Colony,
New Delhi

...Complainant

Versus

OASIS Landmarks LLP
Office: 3rd Floor, UM house Tower A, Plot
no:35, Tower B, Sector 44, Gurgaon, Haryana

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri. D.K.Sharma
Shri. Kapil Madan

On behalf of complainant
Advocate for the respondent

ORDER

1. A complaint dated 03.08.2018 was filed under Section 31 of the Real Estate (regulation & development) Act, 2016 read with rule 28 of the Haryana Real Estate (regulation and development) Rules, 2017 by the complainant Vastuvidha India LLP against OASIS Landmarks LLP on account of violation of 4.2 of the apartment buyer's agreement executed

on 21.08.2015 for apartment no. A1601, tower A, 15th Floor with a super area of 2066 sq. ft in the project “Godrej Oasis”, a group housing colony for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the space buyer’s agreement has been executed on 21.08.2015 i.e. prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	“Godrej OASIS” Sector 88A and 89A, Gurugram
2.	Nature of project:	Group housing residential project
3.	DTCP licence no.:	85/2013 dated 10.10.2013
4.	Licence holder:	Oasis Buildhome Pvt. Ltd.
5.	Unit No.	GODOASA1601, tower A, 15 th Floor

6.	Unit area	2066 sq. ft
7.	Project area	6.8 Acres
8.	RERA Registration	Registered
9.	Registration number	53 of 2017 valid upto 30.09.2019
10.	Date of execution of apartment buyer's agreement	21.08.2015
11.	Total consideration	Rs. 1,58,98,550/-
12.	Total amount paid by the complainant	Rs. 69,41,859/-
13.	Payment plan	Construction Linked Payment Plan
14.	Allotment letter	22.09.2014
15.	Due date of delivery of possession. Clause 4.2: construction shall be completed within 48 months of issuance of allotment letter with 12 months grace period.	22.09.2019
16.	Penalty clause as per apartment buyer's agreement (Clause 4.3)	i.e. Rs 5 per Sq. ft per month of the Super area

4. As per the details provided above, which have been checked as per record of the case file. A apartment buyer agreement is available on record for flat No. GODOASA161, Tower A, 15th floor, Sector 88A and 89A, Gurugram in the project "Godrej Oasis".
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.

The case came up for hearing on 19.7.2018. The reply has been filed on behalf of the respondent.

FACTS OF THE CASE

6. The complainant submitted that the complainant booked a flat on 14.05.2014 for Rs.1,58,98,550/-. A cheque of Rs.7,00,000/- was given by the complainant to the respondent as advance deposit for booking the said flat in the project. The respondent admitted the same and gave a receipt. The agreement was not signed and it was said it would be done on formal launch of the project in public.
7. The complainant further paid various instalments as and when demanded by the respondent to the tune of Rs.69,68,458/-.
8. The complainant was shocked to see the terms and conditions and most of the specifications were totally different and were unilaterally changed. Initially the complainant was told that the carpet area would be 2066 sq. ft but in agreement it was 1460 sq. ft and in actual it was 1161 sq. ft. the difference in

super area is more than 30% and the respondent has cheated the complainant.

9. The complainant submitted that the project is nowhere near completion even after lapse of substantial period of time. The layout of the project is nowhere close to what was depicted. The complainant sent various letters to the respondent dated 16.01.2016, 05.05.2016 and 23.05.2016. refund letters were also given to the respondent even vide e-mail.
10. The complainant on 26.05.2016 received an email from the respondent wherein respondent denied all allegations. On 03.06.2016 complainant sent a reminder to refund the amount of Rs.88,95,985/-.
11. The complainant submitted that on 05.11.2016 respondent sent a email to call upon the payments of Rs.87,72,518/- along with 15% interest p.a.
12. The complainant submitted that till date complainant has paid Rs.69,41,859/- to the respondent.

13. The complainant submitted that the respondent has failed to disclose the lease certificate in respect of the land certifying all dues and charges which have been paid.

14. ISSUES RAISED BY THE COMPLAINANT

- I. Whether the respondent has provided possession of the said unit to the complainant?
- II. Whether the respondent is entitled refund of amount paid by him along with GST?

15. RELIEF SOUGHT

- I. To refund the entire amount of Rs.69,41,859/- along with interest @18% per annum.
- II. To direct the respondent to provide compensation for cheating and harassing the respondent.
- III. To provide any other relief as the Authority deems fit and proper.

RESPONDENT'S REPLY

16. The respondent submitted that Vastuvidha applied for allotment vide application form dated 14.5.2014 wherein it

was mentioned that super area will be 2066 sq. ft. An allotment letter dated 22.09.2014 was issued allotting apartment no.A1601 on 16th floor.

17. The respondent submitted that as per the agreement clause 2.5 the earnest money will be 20% of the basic sale price. That the complainant failed to make payments and committed default as per clause 8 of the agreement. Respondent submitted that complainant have failed to make payment towards the construction linked invoices a sum of Rs.87,72,518/- is outstanding payable by the complainants.
18. The respondent send several reminders dated 13.01.2016, 18.04.2016, 20.04.2016, 09.05.2016, 09.08.2016, 10.08.2016, 13.08.2016, 05.11.2016 to make payment but nothing was done.
19. The respondent submitted that upon noticing downfall in the market value of the flat, the complainant made a cancellation request in April 2014 in the call center operationed by the respondent. Thus the story of complainant is baseless.

20. That the complainant has not come to this authority with clean hands. Non-payment by the complainant has caused hardship to the respondent in completing the project.
21. The present complaint is liable to be dismissed on account of concealment of facts and documents. The complaint is bad for non-joinder of necessary party i.e., Oasis Buildhome Pvt. Ltd. which is the landowning company.

DETERMINATION OF ISSUES

22. With respect to the **first and second issue**, complainant has already paid Rs.69,41,859/- to the respondent against a total sale consideration of Rs. 1,58,98,550/-.
23. However, the complainant/buyer is not satisfied with the workmanship of the project and he has given various reasons such as the building is not constructed as per the National Building Code. However this is a subject matter of adjudication at a later stage when he actually takes the possession of the unit. Complainant intends to wriggle out of project and is seeking refund by foregoing 10% of the total sales consideration. As per RERA authority regulation the

complainant can wriggle out of the project after foregoing 10% of the total consideration amount alongwith GST which the respondent has paid to the Government.

24. Keeping in view the prevailing circumstances, the complainant is entitled for refund amount (without interest) after deducting 10% of the total consideration amount alongwith GST which the respondent has paid to the Government.

FINDINGS OF THE AUTHORITY

25. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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 complainants at a later stage.
26. In the present complaint complainant has already paid Rs.69,41,859/- to the respondent against a total sale consideration of Rs. 1,58,98,550/-.

27. Counsel for the respondent has submitted a copy of OC and the same has been placed on record.
28. However, the complainant/buyer is not satisfied with the workmanship of the project and he has given various reasons such as the building is not constructed as per the National Building Code. However this is a subject matter of adjudication at a lateral stage when he actually takes the possession of the unit. Complainant intends to wriggle out of project and is seeking refund by foregoing 10% of the total sales consideration. As per RERA authority regulation the complainant can wriggle out of the project after foregoing 10% of the total consideration amount alongwith GST which the respondent has paid to the Government.
29. Keeping in view the prevailing circumstances, the respondent is directed to refund amount (without interest) after deducting 10% of the total consideration amount alongwith GST which the respondent has paid to the Government within a period of 90 days from the date of issuance of this order.

DECISION AND DIRECTIONS OF THE AUTHORITY

30. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue direction to the respondents:

- i. The respondent is directed to refund amount (without interest) after deducting 10% of the total consideration amount along with GST which the respondent has paid to the Government within a period of 90 days from the date of issuance of this order

31. Complaint is disposed of accordingly.

32. 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 30.04.2019