

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

|                           |   |             |
|---------------------------|---|-------------|
| Complaint no.             | : | 323 of 2018 |
| Date of filing complaint: |   | 24.05.2018  |
| First date of hearing:    |   | 19.07.2018  |
| Date of decision          | : | 22.08.2022  |

|   |                     |
|---|---------------------|
| 1. Neha Gupta<br>2. Tarun Gupta<br><b>Both R/o:</b> R6/242, Raj nagar, Ghaziabad  | <b>Complainants</b> |
| <b>Versus</b>   |                     |
| M/s Oasis Landmarks LLP<br>Registered office at: 3 <sup>rd</sup> floor UM House,<br>Plot no. 35, Tower B, Sector 44, Gurugram | <b>Respondent</b>   |

|                            |                 |
|----------------------------|-----------------|
| <b>CORAM:</b>              |                 |
| Dr. KK Khandelwal          | <b>Chairman</b> |
| Shri Vijay Kumar Goyal     | <b>Member</b>   |
| <b>APPEARANCE:</b>         |                 |
| None                       | Complainants    |
| Sh. Kapil Madan (Advocate) | Respondent      |

**ORDER**

- The present complaint has been filed by the complainant/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 Oasis" Sec 88Aand 89A, Gurugram   |
| 2.    | Project area                                 | 13.759 acres  |
| 3.    | Nature of the project                        | Group housing colony  |
| 4.    | DTCP license no. and validity status         | 85 of 2013 dated 10.10.2013 and valid up to 09.10.2024                          |
| 5.    | Name of licensee                             | Oasis Build home Pvt. Ltd.  |
| 6.    | RERA Registered/ not registered              | Registered<br>53 of 2017 dated 17.08.2017                                       |
|       | RERA Registration valid up to                | 30.09.2019  |
| 7.    | Unit no.                                     | C0001, Ground floor, Tower C<br>[Annexure A15 of the complaint]                 |
| 8.    | Unit measuring                               | 1307 sq. ft.<br>[Annexure A15 of the complaint]                                 |
| 9.    | Date of provisional allotment letter         | 15.11.2016<br>[Annexure 2 of the complaint]                                     |
| 10.   | Date of execution of builder buyer agreement | 21.11.2016<br>[As per the stamp date at annexure A1 of the complaint]           |
| 11.   | Possession clause                            | Clause 4.2<br>The developer shall endeavour to complete the construction of the |

|     |                                       |  |
|-----|---------------------------------------|--|
|     |                                       | apartment latest by March 2018 along with a grace period of 12 months after March 2018. Upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment.<br><i>(Note: The possession clause has been advertently recorded wrong in the proceeding of the day dated 22.08.2022.)</i> |
| 12. | Due date of delivery of possession    | March 2018<br>Calculated as per clause 4.2 of BBA<br>Grace period is disallowed<br><i>(Note: The due date of possession for handing over of possession has been advertently recorded wrong in the proceeding of the day dated 22.08.2022.)</i>   |
| 13. | Total sale consideration              | Rs.93,09,634/-<br>[Annexure 51 of the complaint]   |
| 14. | Total amount paid by the complainants | Rs.22,84,695/-<br>[As per statement of account dated 11.03.2021 at page 154-155 of the reply]  |
| 15. | Payment plan                          | Time linked payment plan<br>[Page 151 of the complaint]  |
| 16. | Possession intimation letter          | 21.05.2019<br>[Page 156 of the reply]  |
| 17. | Occupation Certificate                | 29.03.2019<br>[Page 159 of the reply]  |

**B. Facts of the complaint:**

- That the complainants on 05.06.2016, saw an advertisement by the respondent for spot sale of its ultra-modern super luxury and

low-density apartments in the project known as Godrej Oasis situated in sectors 88A, 89A Gurugram

4. That the complainants were suffering as their daughter is a disabled child having growth equivalent to a 6-8 months child and neither she can move nor she can speak, nor she can eat, nor she can pass out herself. This is precisely the reason that the complainants were looking for a suitable apartment having lawn in front with ample greenery so that the complainants could take care of their disabled child from the courtyard itself and since they could not afford an independent villa, hence the present apartment no C0001.
5. That the respondent lured and induced the complainants herein on 05.06.2016 itself that the project Godrej oasis is being offered by world renowned Godrej group, having a green area of 1.5 acres, with the project being ultra-modern super luxury, low density one. The sales team influenced the complainants herein that the normal price is Rs.6,500/- per sq. ft. and just for 05.06.2016, the price offered is Rs.5,558/- per sq. ft. on 25:75 basis.
6. That the complainant herein on the spot booked apartment no. C0001 having a super area of 1307 sq. ft. @ Rs.5558/- per sq. ft. along with plc @ Rs.150/- per sq. ft. which was marketed as lawn facing apartment along with its courtyard over-looking the greenery and nearly pollution free, where the complainant can have their disabled child lying down with full security and perfect greenery around. The allotment letter dated 05.06.2010 was got signed by the respondent from the complainants.

7. That as on date the complainants, after availing a housing loan, has paid a total of Rs.22.84 lacs in the account of Godrej oasis escrow account and allotment letter dated 15.11.2016, confirming the carpet area of the complainant's apartment no.C0001 as 923 sq. ft., which is absolutely false as the actual carpet area is coming out to be 723 sq. ft., which qualifies as misrepresentation. That the respondent has misrepresented to the complainants herein above as the apartment no.C0001 is not facing any lawn but a wall of the club, nor is there 1.5 Acres of greenery/courtyard but the actual area including the club is 0.89 Acres only, thereby a total misrepresentation and falsity of facts by the respondent.
8. That the project Godrej oasis was sold out to the complainants herein on the basic premise that the project is an ultra-modern super luxury, low density project. It is submitted that a project normally qualifies as a low density one which contains 45 units per acre. But the present project comprises of 102.5 units per acre, totalling to 451 units in 4.4 acres, out of which only 306 units are that of the allottees and 145 EWS units are located in this 4.4 acres, thereby affecting the quality of life, for which the complainants chose this present project. That the respondent further misled and misrepresented the complainant herein and wrongly influenced decision to buy this super luxury project as a project is normally defined as super luxury wherein the ceiling height is 12 ft., but the ceiling height of the complainant's apartment is only 9 ft. which does not even qualify the project as luxury one.

**C. Relief sought by the complainants:**

9. The complainants have sought following relief(s):
  - i. Direct the respondent to refund the amount of Rs.22,84,965/- along with interest @ 15% p.a.
  - ii. Compensation of Rs.50,00,000/- for mental agony, harassment and loss of opportunity and litigation expenses.

**D. Reply by respondent:**

10. That the respondent has duly performed its obligations as per the application form, allotment letter and the apartment buyers agreement. That the allegations of the complainants with regard to density, green area, luxury specifications are baseless and warrants outright dismissal. It is submitted that the complainants have not filed any evidence to support their claim.
11. That the respondent has constructed the entire project in conformity with the approved building plans as sanctioned by the authorities. It is submitted that the respondent has duly completed the project with agreed specifications and amenities and accordingly, the Director, Town and Country has granted occupation certificate dated 29.03.2019 in respect of the project. It is imperative to state that the apartment was booked by the complainants only after inspecting the original site plan, therefore all the allegations made by the complainants are misleading. The complaint should be dismissed on this ground alone.

12. That thereafter, a development agreement dated 22.09.2014 was executed between Oasis Build home Pvt Ltd and the respondent and a general power of attorney dated 22.09.2014 was executed in favour of the respondent. In pursuant thereto, the respondent started developing the project on one portion of the licensed land. The said fact has been clearly disclosed in the application form submitted by the complainants.
13. That the complainants had applied for booking of an apartment C0001 in the project vide application form 05.06.2016. It is pertinent to state that complainants while booking the said apartment had duly inspected and gone through all the details of the project including the site plans, permissions with respect to the project. The said fact is corroborated by clause 62 of the apartment buyer's agreement which has been signed by the complainants.
14. That the DTCP vide license no. 151/2014 dated 05.09.2014 granted license for an additional land parcel admeasuring 0.925 acres adjoining to the 13.759 acres licensed land. Accordingly, an application for approval of the revised building plan was submitted before the DTCP on 21.09.2016 i.e. before the enactment of the Real Estate Regulation Act.
15. That the in-principle approval for the revised building plan was granted by the concerned authorities after following due process on 12.04.2018 and similarly, the final approval for revised building plan was granted on 03.10.2018.

16. Since the inception, it was represented to the complainants that the project consists of 1.51 acres of central courtyard and not 1.5 acres park as wrongly alleged by the complainants. The brochure filed by the complainants with the first complaint clearly stipulates that the project will consist of 1.51 acre of central courtyard. the oxford dictionary defines 'courtyard as "any area enclosed by walls or buildings often opening for street."
17. It is submitted that the respondent has completed the construction of the project with all the agreed specifications and amenities. The Director of Town and Country Planning upon carefully examining the project has granted the occupation certificate dated 29.03.2019 with respect to the project. It is a matter of record as per application form signed by the complainants that price of the apartment was 5,558/- per sq. ft.
18. It is submitted that the complainants had booked an apartment C0001 vide application form 05.06.2016. it is denied that the complainants were charged PLC for a lawn facing apartment. It is submitted that the PLC was paid by the complainants because their apartment is facing internal area of the project and not external area of the project. The complainants have raised this false plea that they have paid PLC for a park facing apartment whereas they have not placed a single document on record to prove their case.
19. The complainants have only paid 22.85 lacs and has miserably failed to clear the balance consideration in order to wriggle out of their contractual obligations. It is submitted that the after the



apartment was booked by the complainants, the respondent had duly issued the allotment letter dated to the complainants. It is submitted that the construction of the project has been completed as per the approved building plans. It is submitted that as per the apartment buyer's agreement (Pre RERA), the carpet area of the apartment was mentioned as 923 sq. ft which was inclusive of the balcony area. it is submitted that the carpet area of the apartment has not changed. it is submitted that the complainants have calculated the carpet area of the apartment in the most whimsical manner which is not as per RERA

20. It is submitted that the complainants have calculated the density in the most whimsical manner. The complainants while calculating the density have only taken into account the area of project Godrej oasis It is submitted that the said calculation made by the complainants is erroneous is while calculating the density, the entire licensed area (13.759 acre +0.925 acre) is to be taken into account. It is reiterated that the respondent has developed the project in strict conformity with the approved building plans. The respondent craves leave of the authority to refer the averments made in preliminary objections and preliminary submissions in this regard.
21. 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:**

22. The plea of the respondent 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 respondent to refund the amount of Rs.22,84,965/- along with interest @ 15% p.a.**

23. The complainants were allotted unit no. C0001 on the ground floor in Tower C in the project "Godrej Oasis" by the respondent-builder for a total consideration of Rs. 93,09,634/- under the time linked payment plan. After the allotment letter was issued on 15.11.2016, the respondent builder continued to receive the payments against the allotted unit. A buyer's agreement in this regard was executed between the parties on 21.11.2016. The due date of possession of the subject unit was calculated as per clause 4.2 where the developer would endeavour to complete the construction of the apartment latest by March 2018 along with a grace period of 12 months after March 2018. and which comes out to be March 2018 as grace period is disallowed. It has brought on record that the complainants had deposited several amounts against the allotted unit and paid a total sum of Rs. 22,84,695/- as per statement of account dated 11.03.2021 at page 154-155 of the reply. Thus, considering the above mentioned facts, the due date

of possession of the allotted unit as per agreement for sale as mentioned in the table above is March 2018 and the allottees in this case have filed this application/complaint on 24.05.2018 .

24. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. But since in the present case respondent builder has offered possession of the unit after obtaining occupation certificate on 29.03.2019 i.e. after due date of handing over of possession. Thus, the respondent has fulfilled obligation conferred upon him and there is delay on part of respondent in handing over the possession of the allotted unit. Therefore, a case for delay possession charges from the due date of possession i.e. March 2018 upto the date of offer of possession i.e. 21.05.2019 is made out and not a case of refund of the paid up amount.
25. Faced with this situation, it is contended by the complainants that they donot want to continue with the project and withdraw from the same and seek refund of the paid up amount besides interest. The request made in this regard is being opposed by the respondent through its counsel but keeping in view the circumstances detailed above and the medical emergencies being faced by the complainants, their request for refund of the paid up amount instead of delay possession charges against the allotted unit is accepted but subject to deduction of 10% of the basic sale price of the unit.

In view of aforesaid circumstances, the respondent is directed to refund the paid up amount to the complainants after deducting 10% of the basic 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 @ 10% p.a. on the refundable amount, from the date of filling of the complaint which shall be treated as date of surrender i.e. 24.05.2018 till the date of realization of amount.

**F.2 Compensation for mental agony, harassment and loss of opportunity /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:**


26. Hence, the authority hereby passes this order and issues 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 respondent-promoter is directed to refund the paid up amount to the complainants after deducting 10% of the basic 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 besides interest @ 10% p.a. on the refundable amount, from the date of filling of the complaint i.e. 24.05.2018 which shall be treated as date of surrender of the unit till the date of realization of that amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

V.I-3  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. KK Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 22.08.2022**



**HARERA**  
GURUGRAM