

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

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| Complaint no. : | 6596 of 2019 |
| Date of filing complaint: | 20.12.2019 |
| First date of hearing: | 22.01.2020 |
| Date of decision : | 24.08.2022 |

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| Jai Ram Das Harjani Both R/o: 15, First floor, Shivalik apartment, Alkananda Kalkaji, New Delhi- 110019 | Complainant |
| Versus | |
| M/s Oasis Landmarks LLP Registered office at: UM House, 3rd Floor, Plot No. A, Plot 35, Tower-A, Sector 44, Gurgaon, Haryana | Respondent |

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| CORAM: | |
| Dr. KK Khandelwal | Chairman |
| Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | |
| Sh. Abhishek (Advocate) | Complainant |
| Sh. Saurabh Gauba (Advocate) | Respondent |

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 Oasis" Sec 88A and 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 151 of 2014 dated 05.09.2014 and valid up to 04.09.2024 |
| 5. | RERA Registered/ not registered | Registered 53 of 2017 dated 17.08.2017 |
| | RERA Registration valid up to | 30.09.2019 |
| 6. | Unit no. | C0803, 8th floor [Page 20 of the complaint] |
| 7. | Unit measuring | 1150 sq. ft. [Page 20 of the complaint] |
| 8. | Date of allotment letter | 22.09.2014 [Page 11 of the complaint] |
| 9. | Date of execution of builder buyer agreement | 19.02.2015 [Page 15 of the complaint] |

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| 10. | Possession clause | Clause 4.2 The developer shall endeavour to complete the construction of the apartment within 48 months from the date of issuance of allotment letter alongwith a grace period of 12 months over and above this 48-month period (emphasis supplied) |
| 11. | Due date of delivery of possession | 22.09.2018 Calculated from the date of allotment letter i.e. 22.09.2014 |
| 12. | Total sale consideration | Rs.1,23,65,200/- [Page 61 of the complaint] |
| 13. | Total amount paid by the complainants | Rs.40,14,400/- [As per statement of accounts dated 13.12.2019 on page 82 of the reply] |
| 14. | Payment plan | Construction linked payment plan [Page 76 of the complaint] |
| 15. | Offer of possession | Not offered |
| 16. | Reminder letter | 07.09.2015,06.11.2015, 10.11.2015,25.11.2015, 27.01.2016 and 20.04.2016 |
| 17. | Pre-termination letter | 11.08.2016 [Page 96 of the reply] 05.11.2016 [Page 94 of the reply] |
| 18. | Termination letter | 20.12.2021 [As per the document supplied by the counsel for the respondent on hearing dated 22.08.2022] |
| 19. | Occupation Certificate | 29.03.2019 [Page 78 of the reply] |

B. Facts of the complaint:

3. That the complainant had booked a residential flat in "Godrej Oasis" Sector - 88A, Gurgaon and was allotted apartment no.0803, Tower C on 8th floor admeasuring approx. 1628 sq. ft. At basic sale price of Rs. 6,500/- per sq. ft. for a sale consideration of Rs. 1,23,65,200.00/- with customer code 0010014251.
4. That thereafter, a flat buyers agreement dated 19.02.2015 was executed at Gurgaon between parties. The complainant has made payment as per construction linked plan has paid a sum of Rs. 40,06,032/-, as demanded by the respondent till 27.05.2016. The complainant is a 80 years old senior citizen and purchased this apartment to stay in Gurgaon after the demise of his wife in Mumbai as her daughters stay in Delhi as the complainant is a heart patient .
5. That the complainant had taken loan from various sources to purchase this apartment and he is suffering from great hardship at the age of 80 and wants refund of his money with interest.
6. That the respondent kept sending payment reminder notice from time to time. The complainant time and again visited the office of the respondent and met several officials who assured the complainant that the matter will be solved and money will be returned with interest to the complainants but till date no steps have been taken by them to settle the matter.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s):

- i. Direct the respondent to refund the sum of Rs. 40,06,032/-, paid by the complainant along with 24% interest per annum
- ii. Direct the respondent to pay Rs.10 lacs for mental agony, harassment, and loss of opportunity litigation expenses.

D. Reply by respondent:

8. It is submitted that thereafter an apartment buyer agreement was duly executed between the parties on 19.02.2015. As per clause 4.2 of buyer's agreement stipulated the tentative completion date of the apartment as 48 months + grace period of 12 months over and above the period of 48 months from the date of issuance of allotment letter dated 22.09.2014.
9. It is submitted that the respondent and have obtained the occupancy certificate dated 29.03.2019. Thereafter, the respondent sent a letter dated 30.03.2019 to the complainant and informed about the receipt of the occupation certificate. Vide the said letter the complainant was also requested to access their apartment for carrying out fit out works.
10. The complainant failed to honour its obligation in as much as the complainant failed to pay the demands raised as per the opted payment plan. It is submitted that the complainant has abjectly failed to honour its obligation regarding timely payment and has failed to clear the outstanding amount till date. It is submitted that the total cost of the apartment was Rs.1,23,65,200/- As on 13.12.2019 there is an outstanding amount of 76,54,965/- together with the interest amount of 1,19,07,722.19/-.

11. That instead of paying the outstanding amount due, the complainant abruptly sent a request vide an email dated 23.06.2016. It is submitted that a bare perusal of the email would reveal that the complainant is seeking an exit/cancellation of the units admittedly on account of non-appreciation/ fall in the market price of the apartment. It is submitted that the complainant is a speculative investor who has admittedly booked the unit for investment purposes only and has no intent to use the same for its own purposes.
12. It is submitted that the respondent sent various reminder letters dated 07.09.2015, 06.11.2015, 10.11.2015, 25.11.2015, 27.01.2016 and 20.04.2016 requesting the complainant to clear the outstanding amount but to no avail. The complainant failed to clear the outstanding despite repeated reminders and as such the respondent was constrained to issue a pre-termination letter dated 05.11.2016 and 11.08.2016.
13. That it is relevant to state here that the respondent has not only lost the opportunity to sell the said flat to some other person, who would have adhered with the terms of the contract and paid the entire sale consideration in time.
14. It is reiterated that the complainant is not entitled to any refund as the application form clearly stipulates that the booking amount shall be forfeited in case the complainant fails to make any further payment as agreed in the payment plan. As per clause 15 application form and clause 2.5 of buyer's agreement clearly stipulated that 20% of the total cost shall be construed as booking

amount that was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the complainant.

15. 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:

16. In view of the judgment dated 11.11.2021 passed by the Apex Court in the case bearing no. *SLP(Civil) No(s). 3711-3715 OF 2021*) titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.*, and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer.
17. 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 respondent to refund the sum of Rs.40,06032/- paid by the complainant alongwith 24% interest per annum.

The complainant was allotted unit no. C0803 on 8th floor in 8 in the project "Godrej Oasis" by the respondent's builder for a total consideration of Rs. 1,23,65,200/- under the construction linked payment plan on page 76 of the complaint. After the allotment letter was issued on 22.09.2014, the respondents builder continued to receive the payments against the allotted unit.

During the course of argument, the complainant has produced proof of having asked for refund before the due date of possession and also various letters were sent to the respondent between due date of possession and date of receiving OC by the promoter. The legal notice dated 01.05.2017 and an email dated 11.11.2016 was sent to the respondent against seeking the refund in response to a notice by the promoter asking for due payment. Also an email dated 13.08.2016, again seeking refund from the promoter and feeling aggrieved even expressed his anguish by writing that it is very unfortunate that such a reputed company is resorted to such unethical practice and many other email dated 21.06.2016, 08.05.2016, 23.04.2016 etc.

The complainant has paid an amount of Rs. 40,14,400/- as evident from the statement of accounts dated 13.12.2019 (on page 82 of the reply) out of the total amount of Rs. 1,23,65,200/-. The complainant failed to pay the remaining amount as per the schedule of payment and the respondent had issued reminder letters dated 07.09.2015, 06.11.2015, 10.11.2015, 25.11.2015, 27.01.2016 and 20.04.2016.

18. That the complainant did not come forward to clear their dues and take possession, due to which the respondent was left with no option but to issue pre termination letters dated 11.08.2016 and 05.11.2016 and further cancellation was issued to the complainant on 20.12.2021.

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 buyer's agreement, the allottee was liable to pay the timely payment of the instalments of sale consideration along with the charges as per clause 1.2 of the buyer's agreement.

As per clause 2.5 of terms and conditions of buyer's agreement dated 19.02.2015, it has been specifically agreed between the parties that 20% of the basic sale price shall be considered and treated as earnest money.

The respondents have obtained occupation certificate from the competent authority on 29.03.2019 but no offer of possession has been made. The respondent has given ample opportunities by way of reminder letters to complainant and thereafter when the complainant did not come forward to pay the outstanding amount,

the respondent cancelled the unit allotted to the complainant 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 respondent is 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 @ 10 % p.a. on the refundable amount from the date of cancellation i.e. 20.12.2021 till the date of its payment.

F.2 Compensation of Rs.10 lacs for mental agony, harassment and loss of opportunity and litigation 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:

19. 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 respondent-promoter is directed to refund the paid up amount to the complainant 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 @ 10% p.a. on the refundable amount, from the date of cancellation i.e. 20.12.2021 till the date of realization of 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.

20. Complaint stands disposed of.

21. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2022

HARERA
GURUGRAM