

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

Complaint no. : 1050 of 2021
First date of hearing: 03.05.2021
Order reserved on : 26.04.2023
Date of pronouncement : 26.07.2023

Mr Saurabh Seth & Mrs. Khyaati Seth R/o: - Flat No.-222, Sector-18B, Block- b, DDA Multistorey , Dwarka , New Delhi-110078	Complainants
Versus	
M/s Oasis Landmarks LLP Office: 3rd Floor, UM House, Tower B, Plot No. 35, Sector-44, Gurgaon, Haryana M/s Oasis Build Home Private Limited Office at: 19, Maulana Azad Society, Parwana Road, Pitampura, New Delhi	Respondents

CORAM:	
Shri Ashok Sangwan	Member

APPEARANCE:	
Ms. Priyanka Agarwal	Counsel for Complainants
Sh. Varun Tandon and Shri Ramjit AR of the company	Counsel for Respondents

ORDER

1. The present complaint dated 02.03.2021 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Heads	Details
1.	Name and location of the project	Godrej Oasis, Sector 88A, Gurugram
2.	Project area	4.4 acres
3.	Nature of project	Group Housing comprising of multi-storied residential building
4.	RERA registered/not registered	Registered vide 53 of 2017 dated 17.08.2017 valid upto 30.09.2019
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013 valid upto 09.10.2024
6.	Provisional allotment letter dated	22.09.2014 (Page 75 of complaint)
7.	Unit no. as per the allotment letter	D0401, 4 th floor, tower D (Page 75 of complaint)
8.	Unit measuring	1045 sq. ft. (carpet area) (Page 41 of reply)
9.	Date of execution of buyer agreement	19.02.2015 (Page 36 of complaint)
10.	Possession clause	4.2 of the said agreement i.e., 48 months from the date of issuance of allotment



		<i>letter along with grace period of 12 months over and above this period.</i> [Page 48 of complaint]
11.	Due date of possession	22.09.2019 Grace Period is allowed as the same is unqualified
12.	Total consideration as per BBA on page 74 of complaint	Rs. 1,15,21,700/-
13.	Total amount paid by the complainants as per SOA at page 78 of complaint	Rs. 66,44,442/-
14.	Occupation certificate	29.03.2019 (Page 46 of reply)
15.	Offer of possession	Not offered
16.	Reminder Letters	19.02.2015, 19.03.2015, 25.11.2015, 19.01.2016, 18.04.2016, 09.05.2016, 09.08.2016, 06.11.2016
17.	Pre-termination letter	24.11.2016 (Page 42 of reply)
18.	Surrender Letter	Vide mail dated 10.09.2017 (Page 79 of complaint)
19.	Termination Letter	31.03.2020 (Page 32 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the respondent advertised its project in the name of Godrej Properties and promoted his project for good connectivity with Dwarka expressway. Complainants were allured by an enamoured advertisement of the respondent and believing the plain words of

✓



- respondent in utter good faith the complainant was duped of their hard-earned monies which they saved from bonafide resources.
- II. That due to brand name of Godrej Properties and good connectivity builder launching price is very high when project grow and people now the reality of that brand name project market value was down, and builder start to sell project in very cheap rate.
- III. That the complainants booked the apartment dated 03/04/2014 in Project "Godrej Oasis" Situated at Sector-88 A & 89 A, Gurugram. The initial booking amount of Rs 600000/- were paid through cheque no 057441 dated 03.04.2014.
- IV. That the Complainants were got allotment letter and payment schedule dated 22.09.2014 in which mentioned allotted unit D-0401 on Fourth Floor, Tower-D tentatively super area admeasuring 1479 Sq. ft. & total sale consideration of flat was about Rs 1,15,21,700/-.
- V. That the respondents to dupe the complainants in their nefarious net even executed apartment buyer agreement signed between complainants and M/s Oasis Landmarks LLP on dated 19.02.2015. Just to create a false belief and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.
- VI. That the basic sale price of flat is Rs. 96,13,500/- out of that Rs 66,44,442/- was paid by complainants to the Respondent in on before 08/04/16 amounting to 69% advance and rest of the amount was supposed to be paid in accordance with Schedule VII (Schedule of Payments) of the Agreement.
- VII. That despite having paid about 69% of the basic sale price at the



very outset, the Complainant started receiving demand notices from Respondent within a period of 2 years, seeking payments amounting to about 90% of the Basic Sale Price in sharp contrast to the promise of payments being required to be made within a span of 4-5 years.

- VIII. That respondent persistently raised huge demands of instalments complainants wrote several emails to builder and told about unprofessional behaviour of their employees and later in his emails dated 30.11.2015 & 10.09.2017 asked for refund of the money paid with interest but got no satisfactory response but respondent keep on sending demand of instillments.
- IX. That the Complainant in the email dated 30.11.2015 & 10.09.2017 and in later emails to the respondent, tried to ask for cancellation and refund of paid money with interest which the respondent avoided for more than 2 years. The intensions of the builder are malafied as in the current situation he is just passing time and forcibly trying to build upon the interest part which gives him a reason to forfeit the complete money given against the said property.
- X. That demand notices have been consistently received by the Complainants informing them about the overdue payments on their part, as the slabs had been completed by the Respondent as per the Agreement. Notably, the demand letters clearly mention that the Complainants would be liable to pay an interest of 15% p.a. from the date of the payments becoming due. Builder sent the email to complainants about cancelation of unit and asked forfeiture clause will applicable and respondent sent Pre-termination letter through email on dated 24.11.2016. Finally



respondent sent the termination letter to complainants dated 31/03/2020 through email. That after termination builder liable to refund the paid amount but till date builder did not refund the paid amount after termination of unit builder continuously raised the demand along with 15 % penal interest is unilateral arbitrary and illegal.

- XI. The Complainants have approached the Respondents at various levels after termination visited office and asked for refund the balance amount, but builder not refund the single penny till date. Afterwards complainants got calls from respondent for settlement, but they were just time gaining tactics. It will not be out of place to mention that the Respondents have failed to secure the basic concerns of the Complainant by making accessible roads from the entrance of the Project to the Apartments, thereby leading to excessive dust in the surrounding air and apprehension of serious health hazards.
- XII. It is further submitted that the Complainants have been constantly requesting the Respondents herein to refund their paid amount with interest. That the Complainants had also received termination notices from the Respondent, thereby threatening the Complainant of forfeiture of earnest money submitted by the Complainant, in the event of non-payment of the monies by the Complainant along with the interest @15% p.a.
- XIII. It is submitted with regard to Earnest Money clause no 2.4 of ABA that it must be given at the moment at which the contract is concluded and that it represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract. The Complainants submits that whenever a seller (Respondent



herein) forfeits an amount paid by a buyer (Complainant herein) under an agreement to sell then the source of right of forfeiture arises only because of Section 74 of the Contract Act. This is because Section 74 enacts a uniform principle that would apply to all amounts to be paid in case of breach, whether they are in the nature of penalty or otherwise.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to refund the entire paid-up amount to the complainants along with interest @ 15% per annum calculated from the date of respective deposit till the date of actual realization.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
 - i. That the complainants are not allottees as the allotment of the Complainants stands cancelled by the Respondent vide termination letter dated 31.03.2020 for non-payment of the outstanding dues in terms of the Payment Schedule in the Apartment Buyer Agreement executed between the parties. It is thus submitted, that this Authority has no jurisdiction to entertain and adjudicate the captioned Complaint, in its present form.
 - ii. The complaint smacks of *mala-fides* and the Complainants are guilty of *suppressio veri* and *suggestio falsi*. The Complainants has purposefully, with the intent to misguide this Authority, concealed

material facts, the revelation of which will lead to dismissal of the complaint itself. The Complainants have concealed the fact that immediately after the execution of the Allotment Letter, they defaulted in making payments in terms of the Payment Schedule. The answering Respondent was constrained to issue numerous reminder letters seeking payment of outstanding dues, starting as early as 19.02.2015. The Complainants have not placed the umpteen Notices and the numerous reminder Letters issued by the Respondent no. 1 to the Complainants for payment of instalments according to Payment Schedule and for recovery for outstanding dues. The said act of the Complainants amounts the perjury, for this reason the answering Respondent reserves its right to initiate appropriate legal proceedings in this regard. On the contrary, due to non-payment of outstanding dues by the Complainants, it is the answering Respondent who has suffered loss and hence reserves the right to file appropriate proceedings to recover such loss. Copy of the various reminders/notices/emails served upon the Complainants dated 19.02.2015, 19.03.2015, 06.11.2015, 25.11.2015, 19.01.2016, 20.04.2016, 09.05.2016, 09.08.2016, 06.11.2016 and 24.11.2016.

- iii. It is humbly submitted that vide clause 2.5 of the Apartment Buyer Agreement dated 19.02.2015 (hereinafter referred to as "ABA"), the Complainants have categorically and willfully agreed that 20%



of the Basic Sale Price shall be considered as earnest money. The Clause 2.5 is reproduced herein below for ready reference:

"It has been specifically agreed between the parties that, 20% of the Basic Sale Price, shall be considered and treated as earnest money under this Agreement ("Earnest Money"), to ensure the performance, compliance and fulfillment of the obligations and responsibilities of the Buyer under this agreement"

The stipulation as to the earnest money was also encapsulated in the terms and conditions of the Application form, which was duly executed by the Complainants. The relevant clause 15 of the same is reproduced as under:

"It is understood by the Applicant(s) that 20% of the Basic Sale Price (as referred in Section F hereinbefore) shall be construed, considered and treated as 'Earnest Money' to ensure the performance, compliance and fulfilment of his/her obligations under this Application Form and Allotment Letter."

iv. Further, Clause 8.1 of the ABA refers to the 'Buyers' Event of Default' and sub clause (i) of the same is reproduced below for ready reference:

"As stipulated in Clause 2.10 herein, failure to make the entire payment and/or payment of any installment due out of the balance consideration as per Clause 2.4 herein on the expiry of period granted for making such payments under the demand notice"

v. Clause 8.2. of the ABA states that on the happening of the Buyers' Event of Default, the Developer shall call upon the Buyer by way of a written notice to rectify the same and upon failure of the Buyer to do so within the specified time, the Developer shall have the right to forthwith terminate the ABA without any further notice/intimation to the Buyer. Clause 8.3 of the ABA states that on



and from the date of termination on account of Buyers' Event of Default, as mutually agreed between the parties, the Developer shall be entitled to forfeit the entire Earnest Money, statutory dues and any interest on delayed payments made by the Buyer to the Developer. It is evident from the numerous notices, the pre termination letter and termination letter sent by the Respondent no. 1 that there had been gross delay on the part of the Complainants to pay the installments as per the mutually agreed upon payment schedule. As per the mutually and willfully agreed upon terms of the ABA, in case of termination on account of Buyers' Event of Default, the Developer after forfeiting the Earnest Money, statutory dues and interest, if any, on the delayed payments shall refund the balance amount to the buyer or the financial institution, as the case may be, without any interest. Thus, the present complaint deserves to be dismissed as the same is devoid of any merit.

- vi. It is submitted that the Complainants have sought to allege violation of Section 18(1) of RERA. Without prejudice, it is submitted that the aforesaid reliance placed upon Section 18(1) of RERA is misplaced, as the aforesaid provision has no applicability to the present case or to the averments made in the Complaint under Reply.
- vii. Thus, a bare perusal of the aforesaid provision reveals, that the same is attracted only when the promoter has failed to complete or is unable to give possession of the apartment in question. In the present case, the Occupation Certificate has already been issued by the DTCP on 29.03.2019. Therefore, question of application of Section 18 of the Act does not arise. On the contrary, it is the



Complainants who have time and again delayed making due payments for the unit and now seek a refund in order to avoid paying the outstanding dues. Therefore, it is evident that the present complaint has been filed with an ulterior motive to circumvent the payment of outstanding dues as per the binding agreement between the parties. This being the case, the Complaint has no legs to stand upon and is afflicted with an irregularity that goes to its roots and renders the same ripe for dismissal. For this reason, Section 18 is not attracted in the present case and reliance on same is misconceived.

7. 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

8. The plea of respondent regarding lack of jurisdiction of Authority stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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) The promoter shall-

(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.

11. 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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No.**



13005 of 2020 decided on 12.05.2022, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

- F.I Direct the respondent to refund the entire paid-up amount to the complainants along with interest @ 15% per annum calculated from the date of respective deposit till the date of actual realization.
14. The complainants were allotted unit no. D0401, 4th floor in the project "Godrej Oasis, Sector 88A, Gurugram" by the respondent-builder for a sale consideration of Rs. 1,15,21,700/- and they paid a sum of Rs. 66,44,442/- which is approx. 57% of the sale consideration. A builder



buyer's agreement was executed between the parties on 19.02.2015 and according to the builder buyer's agreement, the due date of possession comes to be 22.09.2019.

15. The respondent issued many reminders on 19.02.2015, 19.03.2015, 25.11.2015, 19.01.2016, 18.04.2016, 09.05.2016, 09.08.2016, 06.11.2016, thereafter, issued Pre-cancellation letter i.e., 24.11.2016 to the complainants for clear their outstanding dues. The Occupation Certificate for the project of the allotted unit was granted on 29.03.2019. It is evident from the above mentions facts that the complainants paid a sum of Rs. 66,44,442/- against sale consideration of Rs. 1,15,21,700/- of the unit allotted to them. Vide mail dated 10.09.2017, the complainants surrendered their unit showing inability to pay further instalments.
16. The Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022, took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. So, it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of earnest money. Keeping in view, the principles laid down by the Hon'ble Apex court in



the above mentioned two cases, rules with regard to forfeiture of earnest money were framed and known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under-

"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.

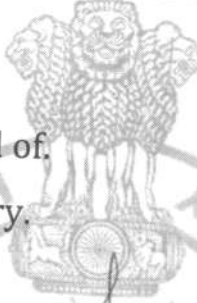
17. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of surrender letter i.e., 10.09.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

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



- i. The respondent is directed to refund the paid-up amount of Rs. 66,44,442/- after deducting 10% of the sale consideration of Rs. 1,15,21,700/- with interest at the prescribed rate i.e., 10.75% p.a. on such balance amount, from the date of surrender letter i.e., 10.09.2017 till the actual date of refund.
 - 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.
19. Complaint stands disposed of.
 20. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2023