

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 2198 of 2022
Date of order : 03.08.2023

Mr. Virendra Kumar and
Mrs. Alpana Kumar

R/O : House No. G-102, Sun City Heights,
Sector 54, Gurugram-122011

Complainants

Versus

M/S Oasis Landmarks LLP

ADDRESS: 3rd Floor, UM House, Tower A, Plot
No. 35, Sector 44 Gurgaon, Haryana

Respondent

APPEARANCE:

For Complainant:

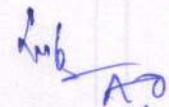
Mr. Sanjeev Dhingra Advocate

For Respondent:

Mr. Saurab Gauba Advocate

ORDER

1. This is a complaint filed by Virender Kumar and Alpana Kumar under section 31,35,36,37 and 38 of The Real Estate (Regulation and Development) Act, 2016 against M/s Oasis Landmarks LLP.


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Page 1 of 8



HARERA GURUGRAM

2. As per complainants, on 29.04.2015, they booked a unit through broker viz. 360 Realtors in the project of respondent viz. "Godrej Icon" situated at sector 88A and 89A in village Harsaru, Tehsil & District Gurgaon, Haryana, for a total sale consideration of Rs.1,34,36,105/- and paid Rs.5,00,000/- through cheque in favour of respondent. After two years on 03.03.2017, respondent issued provisional allotment letter of unit no. A0602, 6th floor admeasuring super area of 1296 sq. ft. Apartment Buyer agreement was signed on 20.03.2017 and offer of possession was given by respondent on 31.10.2020, along with a demand of Rs.36,67,349/-. Till 30.11.2020, an amount of Rs.1,46,85,622/- was paid by them(complainants) which was more than total sale consideration, as mentioned in apartment buyer agreement.
3. That from 04.12.2020 to 14.07.2021 they(complainants) wrote several emails to respondent for providing physical possession of the unit but respondent failed to do so. They (complainants) filed a complaint no. 3184/2021 before the, Haryana Real Estate Regulatory Authority, Gurugram (Authority) for the possession of apartment, wherein, Hon'ble authority vide order dated 11.01.2022, "directed the respondent to handover the physical possession of the flat with in 30 days and execute the conveyance deed in favour of complainants. After said order, respondent executed the conveyance deed on 08.02.2022.
4. That due to above said act of respondent, they (complainants) suffered the loss of interest on the amount of Rs. 14,685,622/-

Amby
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HARERA GURUGRAM

from the date of final payment i. e 27.11.2020 till the date of execution of the conveyance deed dated 08/02/2022. They (complainants) also suffered the loss towards differential and incremental Stamp Duty of Rs. 2,75,000/- which was unnecessarily paid by them (complainants) due to delay in conveyance deed.

5. Constrained in this manner, they (complainants) have approached this forum, with prayer for direction to respondent to pay :

- (i) To compensate the complainants towards the loss of interest on the amount of Rs. 14,685,622/- from the date of final payment i. e 27.11.2020 till the date of execution of the conveyance deed dated 08/02/2022.
- (ii) To direct the respondent to pay the loss towards differential and incremental Stamp Duty of Rs. 275000/- which was unnecessarily paid by the complainants due to delay in conveyance deed.
- (iii) To direct the respondent to pay the compensation of Rs. 10,00,000/- towards mental harassment to the complainants.
- (iv) To direct the respondent to pay Rs. 1,00,000/- towards litigation charges.

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(v) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

Respondent contested the complaint by filing written reply. It is averred by the respondent that :-

6. It(respondent) duly carried out construction and accordingly, Directorate, Town and Country Planning granted the Occupancy Certificate of the respective Tower on 18.09.2020. Tentative date for completion of the apartment was 46+6 months from the date of the allotment letter which comes out to be 03.07.2021. It(respondent) offered possession of the unit within the agreed time frame in accordance with BBA on 31.10.2020. Complainants have defaulted on several occasions to pay timely flexi possession linked plan post the execution of the agreement.
7. It is reiterated that instead of taking possession of the apartment, complainants opted to file a complaint no. 3184/2021 before the Hon'ble Regulatory Authority for refund of CAM and CAE as well as DPC, which was disposed off vide order dated 09.03.2022 in favour of the respondent.
8. Complainants are twisting the facts to portray that the allotment letter dated 03.03.2017 was issued to the complainants after two years from the date of booking the apartment, whereas, as per the record of the case, respondent initially issued allotment letter dated 28.10.2015 and

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thereafter sent Builder Buyer Agreement which was dispatched on 01.05.2016. Despite sending several reminders by the respondent, complainants failed to come forward and execute said agreement and failed to honour their obligations.

9. Thereafter, the complainant namely Virender Kumar on 22.02.2017 requested the respondent for addition of Ms. Alpana Kumar as one of the Co-applicant in the allotment of the apartment in the project. Respondent being a customer centric organization, acceded to the request of the complainant and added the name of Alpana Kumar as a co-applicant and as such fresh allotment letter dated 03.03.2017 (hereinafter to be referred as "Allotment Letter") was reissued in the name of both the complainants i.e Alpana Kumar and Virender Kumar.

10. Present complaint filed by complainants is expressly barred by the provisions of law, as it is hit by the principles of "Res Judicata" as the Hon'ble Authority while dealing with the similar allegations disposed of the Complaint bearing No.3184 of 2021 titled Virendra Kumar vs Oasis Landmark LLP observed "As the Possession was handed over before the due date so no DPC is payable". After execution of conveyance deed on 08.02.2022, complainants filed this complaint, which is devoid of any merits and as such should be dismissed with cost.

I heard learned counsels representing both of the parties and went through record on file.

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11. It is contended on behalf of complainants that along with letter offering possession dated 31.10.2020, the respondent demanded payment of Rs.36,67,349/-. Till 30.11.2020, they (complainants) paid an amount of Rs.1,46,85,622/- which is more than the total sale consideration. All this is not denied by respondent.
12. Complainants filed a complaint before the Authority which was decided on 09.03.2022. The Authority mentioned that, physical possession of unit in question was handed over on 11.01.2022. Needless to say that during proceedings of the same complaint, the Authority on 11.01.2022, directed respondent to handover possession of the subject unit to the complainants within one month, same was also directed to execute Conveyance Deed.
13. When the complainants had paid amount of total sale consideration till 30.11.2020, complying with demands as raised by respondent, the later is duty bound to handover the possession of subject unit immediately, particularly when same had already received OC. Respondent failed to handover physical possession of subject unit from 30.11.2020 till 11.01.2022 i.e. about more than 13 months without any reasonable excuse. Respondent got undue enrichment on the money paid by allottees/ complainants. The latter are thus entitled for compensation in this regard.
14. The complainants have claimed huge interest on the amount paid by them. In the opinion of the undersigned, the complainants are entitled for compensation for not handing



HARERA GURUGRAM

over physical possession for more than 13 months which may not be necessarily equal to loss of interest on the amount of sale consideration.

15. Subject unit is stated to be a residential unit measuring 1296 sq.ft(super area) situated in project of respondent viz. Godrej Icon at sector 88A and 89A, Gurugram. Although none of the parties have adduced any evidence about the rental value of such accommodation in the area mentioned above. Considering the size of the unit and location of the project, this forum thinks it appropriate to allow a compensation for not handing over possession @ Rs.25000/- p.m. i.e. total amounting to Rs.3,25,000/- for (13 months of delay). Complainants are hence allowed a compensation of Rs.3,25,000/- in this regard to be paid by the respondent.
16. Due to delay in execution of Conveyance Deed, complainants had to pay Rs.2,75,000/- more on stamp duty. This fact is not refuted by respondent. Considering same, prayer in this regard is allowed and respondent is directed to pay a sum of Rs.2,75,000/- (as differential value of stamp duty) to the complainants.
17. The complainants have prayed for Rs.10,00,000/- towards mental agony and harassment. Apparently when, respondent failed to hand over possession of allotted unit and to execute conveyance deed as per agreement, complainants suffered mental agony and harassment. Amount of Rs.10,00,000/- appears excessive. The complainants are allowed

compensation of Rs.1,00,000/- for mental agony and harassment to be paid by respondent.

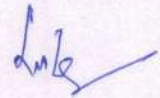
18. Apart from this, complainants have requested for compensation of Rs.1,00,000/- as litigation expenses. Although complainants did not put on file any evidence about fees of advocate or other legal expenses paid/ incurred by them in this case, it is apparent that same were represented by an advocate during trial of this case. Considering all this, complainants are allowed Rs.50,000/- as cost of litigation, to be paid by respondent.

19. I do not find any substance in plea of respondent that present complaint is hit by principle of Res Judicata. Even if present complainants had already filed a complaint, which has been decided by the Authority as mentioned above. Said complaint was on different cause of action. As such, Principle of Res Judicata does not apply here.

20. Complaint stand disposed of. Respondent is directed to pay amounts of compensation as described above, within 30 days of this order, otherwise same will be liable to pay said amounts along with interest @10.5% p.a. till realisation of amounts.

21. Announce in open court today.

22. File be consigned to records.



(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram