

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

Date of decision: 06.03.2024

NAME OF THE BUILDER		M/s Oasis Landmark LLP	
PROJECT NAME		GODREJ OASIS	
S. No.	Case No.	Case title	Appearance
1	CR/6246/2022	Anuradha Choudhry V/s M/s Oasis Landmark LLP and Godrej Properties Limited	Meenal (Complainant) Saurabh Gaba (Respondent)
2	CR/6247/2022	Siddhant Choudhry and Anuradha Choudhry V/s M/s Oasis Landmark LLP and Godrej Properties Limited	Meenal (Complainants) Saurabh Gaba (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of the 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Godrej Oasis situated at Sector-88-A and 89-A, Gurugram being developed by the respondent/promoter i.e., M/s Oasis Landmark LLP. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit along with interest.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"GODREJ OASIS" at Sector-88-A and 89-A, Gurgaon, Haryana
Project area	13.76 acres
DTCP License No.	85 of 2013 dated 10.10.2013 valid upto 09.10.2024
Name of Licensee	Oasis Buildhome Pvt. Ltd.
RERA Registration	53 of 2017 dated 17.08.2017 valid up to 30.09.2019
Possession Clause: 4.2	
<i>"The developer shall endeavor to complete the construction of the apartment within 48 months from the date of issuance of allotment letter, along with a grace period of 12 months over and above this 48-month period ("tentative completion time"). upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment."</i>	
Occupation Certificate: 29.03.2019	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement, Date of surrender	Unit No.	Unit adm easuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/6246/2022 Anuradha Choudhry	10.03.2015 (pg. 41 of complaint)	D0802, 8 th floor, Tower D	1616 sq. ft. (super built-	22.09.2019 (calculated as 48 months	Total Sale Consideration: Rs.1,22,79,400 /-	Refund

	V/s M/s Oasis Landmark LLP and Godrej Properties Limited DOF: 15.09.2022 Reply Status: 31.05.2023	Date of surrender: 30.10.2018 (page 135 of reply)	(Page 95 of complaint)	up area) [as per BBA on pg. 43A of complaint]	from the date of issuance of allotment letter i.e. 22.09.2014 + 12 months grace period allowed being unqualified)	(as per BBA on page 64 of complaint) Amount Paid: - Rs.21,99,706/- (as per SOA dated 28.03.2016 at pg. 90 of complaint)	
2.	CR/6247/2022 Siddhant Choudhry and Anuradha Chaudhry V/s M/s Oasis Landmark LLP and Godrej Properties Limited DOF: 15.09.2022 Reply Status: 18.10.2023	10.03.2015 [pg. 42 of complaint] Date of surrender: 19.08.2015 (page 160 of complaint)	D-0902, 9 th floor, tower-D [as per BBA on pg. 47 of complaint]	1616 sq. ft. (super built-up area) [as per BBA on pg. 47 of complaint]	22.09.2019 (calculated as 48 months from the date of issuance of allotment letter i.e., 22.09.2014 + 12 months grace period allowed being unqualified)	Total Sale Consideration: Rs.1,22,79,400 /- (as per BBA on page 88 of complaint) Amount Paid: - Rs.21,57,690/- (as per SOA dated 23.09.2014 at pg. 111 of complaint)	Refund

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total paid up amount.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6246/2022 Anuradha Choudhry V/s M/s Oasis Landmark LLP and Godrej Properties Limited** are being taken into consideration for determining the rights of the allottee(s).
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/6246/2022 Anuradha Choudhry V/s M/s Oasis Landmark LLP and Godrej Properties Limited

S. No.	Heads	Details
1.	Project name and location	Godrej Oasis, Sector 88A and 89A, Gurugram
2.	Project area	13.76 acres
3.	Nature of project	Group Housing colony
4.	RERA registered/not registered	53 of 2017 dated 17.08.2017 valid up to 30.09.2019
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013 valid upto 09.10.2024
6.	Name of licensee	Oasis Buildhome Pvt. Ltd.
7.	Allotment letter dated	22.09.2014 (Page 95 of complaint)
8.	Date of execution of buyer's agreement	10.03.2015 (page 41 of complaint)

9.	Unit no. as per the buyer's agreement	D0802, 8 th floor, Tower D (Page 95 of complaint)
10.	Unit measuring	1142 sq. ft. (carpet area) [Page 95 of complaint]
11.	Possession clause	4.2. <i>"The developer shall endeavor to complete the construction of the apartment within 48 months from the date of issuance of allotment letter, along with a grace period of 12 months over and above this 48-month period ("tentative completion time"). upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment."</i> (Emphasis supplied) [pg. 49 of complaint]
12.	Due date of possession	22.09.2019 (48 months from date of issuance of allotment i.e., 22.09.2014 + 12 months grace period is allowed being unqualified)
13.	Total consideration as per BBA on page 64 of complaint	Rs.1,22,79,400/-
14.	Total amount paid by the complainant as admitted by respondent on page 8 of reply	Rs.21,99,706/-
15.	Pre-termination letter	05.11.2016 (page 139 of complaint)
16.	Termination letter	18.04.2016 (page 140 of complaint)
17.	Occupation certificate	29.03.2019 (Page 114 of reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That the complainant was allotted an apartment bearing no. D0802 on 8th Floor, Tower No. D having tentatively super area of 1616 sq. ft. in the project of the respondents named "Godrej Oasis" at Sector-88 A & 89 A, Gurugram vide allotment letter dated 22.09.2014. Thereafter, an apartment buyer agreement was executed between the parties regarding the said allotment on 10.03.2015.
 - II. That the basic sale price of flat was Rs.1,22,79,400.00/- out of that Rs.21,99,706.00 /- was paid by the complainant to the respondents in advance and rest of the amount was supposed to be paid in accordance with Schedule VII (Schedule of Payments) of the agreement.
 - III. That despite having paid about 17.5% of the basic sale price at the very outset, the complainant started receiving demand notices from the respondents.
 - IV. That the complainant and her husband have booked two units with the builder at the same time. But due to some personal reason and the complainant's inability to meet the expenses of the both the units and the repetitive demands of the builder, they were opined to surrender one of the two units, and ultimately had decided to surrender the other unit i.e., D0902, which was dully conveyed to the respondents through mails.
 - V. That the complainant has been constantly requesting the respondents to consider their requests of either offering them easier payment plans as has been done to the new/prospective customers or consider cancelling out one of the two units and adjusting that amount in the preferred unit or consider offering the complainant the revised rates at which the new flats are being offered to the prospective customers.

- VI. That the complainant has also received pre-termination and termination notices from the respondent, thereby threatening the complainant of forfeiture of earnest money submitted by her in the event of non-payment of the monies by the complainant along with the interest @15% p.a.
- VII. That as per the clause 4.2 of BBA, the respondent was supposed to hand over the physical offer of possession of the apartment by 22.09.2019, but the respondent has failed to do so till today.
- VIII. That the complainant is aggrieved by the inaction and deficiency in service on part of the respondents. The respondents have time and again sought payments from the complainant while seeking to enforce the agreement entered into between them. However, the respondents have failed to provide basic facilities like that of proper roads and proper access to the flats, thereby leading to deficiency in service on the part of the respondents.
- IX. That the delayed payment charges, according to clause 2.10 of BBA, imposed on the complainants should be treated as unjust, as it has been 7 years since the complainant was served with the allotment letter, but the construction is still incomplete. Therefore, the demands and interest raised by the developer for the delay in payment is an act of sheer double-dealing.
- X. That the clauses governing earnest money i.e. clause 2.5 of the apartment buyer agreement are further ambiguous and ought to be interpreted against the interest of the person who insisted that the clause be included, or who drafted the clause as per the doctrine of contra preferentem.

C. Relief sought by the complainant: -

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

- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
10. 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

11. The respondent no.2 put in appearance through its Advocate and marked attendance on 05.01.2023, 31.05.2023, 18.10.2023 and 10.01.2024 respectively. Despite specific directions vide order dated 05.01.2023 and 31.05.2023, the respondent no.2 has failed to file a reply in the matter. It shows that the respondent no.2 is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, in view of the above, the defence of the respondent no.2 is hereby struck-off for not filing of reply. The complaint is being decided as per documents available on record and submission made by the complainant as well as respondent no.1.
12. The respondent no.1 has contested the complaint on the following grounds: -
- i. That due to continuous default on the part of the complainant to make the timely payment, the apartment booked by the complainant was terminated by the respondent in terms of the agreement vide termination letter dated 18.04.2016 and the instant complaint has been filed by the complainant only in the year 2022 which is after the expiry of 3 years from the date of cause of action. Therefore, the instant complaint deserves to be dismissed as the said complaint is barred by the period of limitation.

- ii. That the complainant unequivocally agreed to make timely payments as per the payment plan provided in the application form and the builder buyer agreement. It was made clear to the complainant that timely payment will be the essence of the transaction. It is further submitted that the complainant made the booking after carefully going through the terms and conditions as mentioned in the application form.
- iii. That clause 15 of the application form and clause 2.5 of the apartment buyer agreement clearly stipulated that 20% of the sale consideration/cost of the property was to be considered/treated as earnest money which was meant to ensure performance, compliance, and fulfillment of obligations and responsibilities of the buyer.
- iv. That clause 2.10 of the apartment buyer agreement clearly stipulated that in the event of non-payment of any installment by the complainant as per the schedule of payments set out in Schedule VII of the agreement, the respondent is within its right to reject the booking and treat the amounts paid towards part earnest money in view of the defaults committed by the complainant.
- v. Further, clause 8 of the apartment buyer agreement clearly stipulated that in case the complainant fails to comply with the terms and conditions of the application form, the respondent shall have the right to terminate/cancel the allotment letter and/or unit agreement.
- vi. That the complainant has paid a total sum of Rs.21,99,706/- to the respondent and has defaulted on several occasions and failed to pay timely construction linked installment post the execution of the agreement.

- vii. That the respondent had duly completed the construction of the Tower and has duly obtained the occupation certificate from the competent authority on 29.03.2019.
13. Copies of all the relevant documents have been filed and placed on the 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

14. 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

15. 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

16. 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.

17. 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 complainant at a later stage.
18. 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."

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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 objections raised by the respondent no.1.

F.I Objection regarding complaint being barred by limitation.

20. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the alleged cause of action arose in April, 2016, when the termination letter was issued to the complainant and any grievance w.r.t. the said termination should have been filed within 3 years from the date of cause of action. After going through the documents available on record as well as submissions made by the parties, it is determined that after cancellation of unit on 18.04.2016, the respondent had subsequently raised a demand from the complainant amounting to Rs.93,85,319/- vide pre-termination letter dated 05.11.2016 giving last and final opportunity to the complainant to pay the outstanding amount within 10 days from the date of receipt of that letter, which makes the cancellation letter dated 18.04.2016 null and void. Further after issuance of pre-termination letter dated 05.11.2016, the respondent has neither issued any proper cancellation letter to the complainant, nor has refunded the paid-up amount to the complainant so far, which clearly shows a subsisting liability. Moreover, the law of limitation is, as such, not applicable to the proceedings under the Act and has to be seen case to case. Therefore, in view of the above, the objection

of the respondent w.r.t. the complaint being barred by limitation stands rejected.

G. Findings on the relief sought by the complainant

I. Direct the respondents to refund the entire paid-up amount along with prescribed rate of interest.

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

(Emphasis supplied)

22. Clause 4.2 of the buyer's agreement dated 10.03.2015 provides the time period of handing over possession and the same is reproduced below:

4.2.

“The developer shall endeavor to complete the construction of the apartment within 48 months from the date of issuance of allotment letter, along with a grace period of 12 months over and above this 48-month period (“tentative completion time”). upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment.”

23. The complainant was allotted an apartment bearing no. D0802 on 8th Floor, Tower No. D having tentatively super area of 1616 sq. ft. in the



project of the respondents named "Godrej Oasis" at Sector-88 A & 89 A, Gurugram vide allotment letter dated 22.09.2014. Thereafter, an apartment buyer agreement was executed between the parties regarding the said allotment on 10.03.2015. As per clause 4.2 of the buyer's agreement, the possession of the unit was to be handed over within 48 months from the date of issuance of allotment letter along with a grace period of 12 months over and above this 48-month period. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter. Thus, the due date for handing over of possession comes out to be 22.09.2019.

24. The complainant has submitted that the complainant and her husband have booked two units with the builder at the same time. But due to some personal reason and the complainant's inability to meet the expenses of the both the units and the repetitive demands of the builder, they were opined to surrender one of the two units, and ultimately had decided to surrender the other unit i.e., DO902 vide letter dated 19.08.2015, and adjusting that amount in the preferred unit which was dully conveyed to the respondents through mails. However, the respondent replied that the same was not possible vide email dated 04.08.2015 that there is no provision to surrender the apartment and remit the proceeds to the other one. It was further informed that in case the complainant wishes to cancel the allotment, the entire amount of earnest money (20%) would be forfeited along with other dues.
25. The respondent has contended that the complainant has defaulted on several occasions and failed to pay timely construction linked installment post the execution of the agreement. Further, clause 2.10 of the apartment

buyer agreement clearly stipulated that in the event of non-payment of any installment by the complainant as per the schedule of payments set out in Schedule VII of the agreement, the respondent is within its right to reject the booking and treat the amounts paid towards part earnest money in view of the defaults committed by the complainant. Moreover, clause 15 of the application form and clause 2.5 of the apartment buyer agreement clearly stipulated that 20% of the sale consideration/cost of the property was to be considered/treated as earnest money which was meant to ensure performance, compliance, and fulfillment of obligations and responsibilities of the buyer. Clause 2.5 of the buyer's agreement is reproduced as under for ready reference:

2.5 "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.

26. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, has already prescribed vide Regulations, 11(5) of 2018 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. Therefore, in view of the above, the contention of the respondent w.r.t. forfeiture of 20% of the sale

consideration/cost of the property to be considered/treated as earnest money stands rejected.

27. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 10.03.2015, the possession of the booked unit was to be delivered by 22.09.2019. However, the complainant has already withdrawn from the project by sending letter dated 30.10.2018 and sought refund of the paid-up amount with interest before the due date of possession i.e., 22.09.2019. So, in such a situation, the complainant withdrew from the project even prior to the due date. Thus, she is not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 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."

28. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.21,99,706/- after deducting 10% of the sale consideration of Rs.1,22,79,400/- being earnest money along with an interest @10.85% p.a. (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 on the refundable amount, from the date of surrender i.e., 30.10.2018 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

29. 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/promoter is directed to refund to refund the paid-up amount of Rs.21,99,706/- after deducting 10% of the sale consideration of Rs.1,22,79,400/- being earnest money along with an interest @10.85% p.a. (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 on the refundable amount, from the date of surrender i.e., 30.10.2018 till its realization.
 - 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.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of.
32. Files be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2024