

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

Complaint no. : 4965 of 2023
Date of complaint : 30.10.2023
Date of decision : 24.07.2024

1. Dinesh Arora,
2. Neera Arora,
Both R/o: - B-39A, Sobha International City,
Sector-109, Gurugram-122017.

Complainants

Versus

Oasis Landmarks LLP
Regd. Office At: 3R, Floor, UM House,
Tower A, Plot No. 35, Gate No.1, Sector-44,
Gurugram-122002.
Also at: 19, Maulana Azad Society, Parwana Road,
Pitampura, New Delhi.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Nitin Yadav (Advocate)
Saurabh Guaba (Advocate)

**Complainants
Respondent**

ORDER

1. 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

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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

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	22.09.2014 (page 48 of reply)
8.	Date of execution of buyer's agreement	03.04.2017 (page 16 of complaint)
9.	Unit no. as per the buyer's agreement	A0104, 1 st floor, Tower A (Page 19 of complaint)
10.	Unit measuring	1460 sq. ft. (carpet area) [Page 19 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>

		<i>(Emphasis supplied)</i> [pg. 30 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 59 of complaint	Rs.1,61,56,800/- + applicable taxes and charges
14.	Total amount paid by the complainant	Rs.1,70,07,347/- (as per page 10 of complaint)
15.	Occupation certificate	29.03.2019 (page 79 of reply)
16.	Offer of possession	26.09.2019 (page 36 of reply)

A. Facts of the complaint

1. The complainants have made the following submissions in the complaint:
 - I. That the complainants were allotted an apartment bearing no. A0104 on 1st Floor, Tower No. A having super built-up area of 2066 sq. ft. and carpet area of 1460 sq. ft. in the project of the respondent named "Godrej Oasis" at Sector-88 A, Gurugram vide apartment buyer agreement dated 03.04.2017 for a total sale consideration of Rs.1,60,04,546/- and the complainants have paid the full amount of the sale consideration and there is nothing left to be paid by them.
 - II. That as per the terms of the buyer's agreement, the respondent was under an obligation to complete the construction of project and handover physical possession of the unit within 48 months from date of allotment along with grace period of 12 months from the date of execution of agreement. It is pertinent to state that the respondent had not completed construction and had not offered the possession of the apartment despite



- several follow-ups and reminders by the complainants. In order to extract payments from the complainants, the respondent made a false representation vide email dated 28.11.2018, that possession of the apartment will be handed over to the complainants by Feb 2019.
- III. That ever after full and final payment of dues as per its final demand, on 26.10.2019, the respondent failed to hand over the possession of the apartment on one or the other pretext.
- IV. That frustrated with such indifferent attitude of the respondent, vide email dated 15.01.2021, the complainants sought refund with interest and other ancillary claims. However, the respondent kept on assuring that the respondent would consider the request of the complainants and address their grievances very soon.
- V. That on account of miserable delay caused by the respondent, the entire purpose of said booking has now been frustrated. The respondent failed to hand over the possession within the timeline prescribed under the agreement and has also failed to fulfill the most fundamental contractual obligation. The respondent has also ignored the demand of the complainants for refund and has caused unbearable mental pain and agony to the complainants who are senior citizens.
- VI. That on account of delay caused by the respondent in construction of the project, the complainants are left with no other option but to seek refund of their amount. The complainants had booked the unit on 21.04.2014 with the hope and belief that the possession will be handed over within the committed. Accordingly, the complainants cannot be expected to wait for an indefinite period and is seeking refund of the money paid to the respondent along with interest and cost.

VII. That the complainants have made visits at the site and observed that there are serious quality issues with respect to the construction carried out by respondent till now. The flats were sold by representing that the same will be luxurious apartment. However, all such representations seem to have been made in order to lure complainants to purchase the flats at extremely high prices. The respondent has compromised with levels of quality and is guilty of mis-selling. There are various deviations from the initial representations. The respondent marketed luxury high end apartments, but they have compromised even with the basic features, designs and quality to save costs. The structure which has been constructed, on the face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality.

B. Relief sought by the complainants: -

2. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
3. 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.

C. Reply by the respondent

4. The respondent has contested the complaint on the following grounds: -
 - i. That the present complaint is barred by limitation as the possession of the apartment was offered on 26.09.2019 and the filing of the present complaint is beyond the period of limitation.
 - ii. That the respondent duly completed the project within the promised timelines and obtained the occupancy certificate dated 29.03.2019.



Pursuant to the above, the respondent duly offered possession vide letter dated 26.09.2019. Despite the possession being offered within the timelines, the complainant failed to come forward to clear its due and take possession. It is submitted that the respondent vide email dated 14.02.2020 again reminded the complainant to come forward and take the handover of the possession, however the complainant with malafide intention to extract unjustified demands failed to comply with the contractual obligations.

- iii. That the application form (clause 18), allotment letter (clause 2.5) inter-alia stipulated earnest money for the purpose of the said application shall be 20% of the sale consideration of the apartment which was to ensure compliance on the part of the complainant. It submitted that clause 5.4 of the agreement clearly provided that in the event there is the default on the part of the complainant to comply with the obligations or the complainant fails to take over the possession of the apartment, the same shall be the complainant's event of default under the agreement.
- iv. That the respondent has charged CAM charges as per clause 7.3 of the agreement and has strictly adhered to the terms and conditions of the contract.
- v. That 20% earnest money was a genuine pre-estimate of damages and is not in the nature of penalty and it is an admitted position that there is a downward revision in the market prices in the real estate sector. It is submitted that the complainant has committed an event of default by not taking possession of the apartment as per the terms and conditions of the agreement despite the same being ready in all aspects. Thus, the instant complaint is liable to be dismissed on account of concealment of material

facts and documents, besides being vitiated on account of the false, vexatious and unsubstantiated allegations levelled by the complainant.

5. 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.

D. Jurisdiction of the authority

6. 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

7. 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

8. 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.

9. 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding complaint being barred by limitation.

10. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the cause of action arose in September 2019, when the possession of the unit was offered to the complainants vide letter dated 26.09.2019 and any grievance w.r.t the same was to be raised within a reasonable period. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
11. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** has held that the period from 15.03.2020 to 28.02.2022 shall stand



excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

12. In the present matter the cause of action arose on 26.09.2019, when the possession of the unit was offered to the complainants by the respondent. The complainants have filed the present complaint on 30.10.2023 which is 4 years 1 months and 5 days from the date of cause of action. Therefore, after taken into consideration the exclusion period from 15.03.2020 to 28.02.2022 as observed by the Hon'ble Apex above, it is determined that the present complaint is within limitation.

G. Findings on the relief sought by the complainants

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

13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)

14. Clause 4.2 of the buyer's agreement dated 03.04.2017 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."

15. 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.
16. The complainant has submitted that the respondent had not completed construction and had not offered the possession of the apartment despite several follow-ups and reminders by the complainants. Further, the structure which has been constructed, on the face of it is of extremely poor quality. Therefore, the complainants vide email dated 15.01.2021 sought refund with interest and other ancillary claims. However, the respondent kept on assuring that the respondent would consider the request of the complainants and address their grievances very soon. Thereafter, a legal notice dated 31.07.2023 seeking refund was also sent to the respondent, but the said request of the complainants was not acceded by it till date.
17. The respondent has contended that it has duly completed the project within the promised timelines and obtained the occupancy certificate on 29.03.2019. Pursuant to the above, the respondent has duly offered

possession vide letter dated 26.09.2019. Despite the possession being offered within the timelines, the complainants failed to come forward to clear its due and take possession. The respondent vide email dated 14.02.2020 again reminded the complainants to come forward and take the handover of the possession, however the complainants with malafide intention to extract unjustified demands failed to comply with the contractual obligations. Further, clause 2.10 of the apartment buyer agreement clearly stipulated that in the event of default on part of the complainants, the respondent is entitled to forfeit the earnest money. Moreover, clause 18 of the application from 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.

18. 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.

19. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 03.04.2017, the possession of the booked unit was to be delivered by 22.09.2019. The occupation certificate for the tower/block in question was obtained on 29.03.2019. Thereafter, the possession of the unit was offered to the complainants vide possession intimation letter dated 26.09.2019. On proceedings dated 24.07.2024, the counsel for the complainants claimed to have requested for refund before filing on this complaint vide letter dated 15.01.2021, but no such documents have been placed on record by him. However, a legal notice dated 31.07.2023 seeking refund of the paid-up amount with interest was admittedly received by the respondent. Therefore, in the instant case, the complainants withdrew from the project post offer of possession after receipt of occupation certificate. So, in such case, refund can only be granted 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."

20. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.1,70,07,347/- after deducting 10% of the sale consideration of Rs.1,61,56,800/- being earnest money along with an interest @11% 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., 31.07.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority

21. 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):
- The respondent/promoter is directed to refund the paid-up amount of Rs.1,70,07,347/- after deducting 10% of the sale consideration of Rs.1,61,56,800/- being earnest money along with an interest @11% 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., 31.07.2023 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the refundable along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of complainant/allotees.
22. The complaints stand disposed of.
23. Files be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.07.2024



(Ashok Sangwan)
Member

HARERA
GURUGRAM