



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	33 of 2024
Date of filing:	29.01.2024
First date of hearing:	04.03.2024
Date of decision:	18.11.2024

Prithipal Singh Sikka

S/o Mr. Sawant Singh Sikka
R/o 1982, ATS Village, Sec 93 A,
Gautam Buddha Nagar,
Noida, Uttar Pradesh- 201304, India

.....COMPLAINANT

Versus

Oasis Landmark LLP

Godrej One, 5th Floor,
Pirojshanagar, Eastern Express Highway,
Vikhroli (East), Mumbai-400079

...RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Adv. Harshit Goyal, counsel for complainant through VC.

Adv. Saurabh Guaba, counsel of respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 29.01.2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT

2. That the complainant is an allottee of the “*Godrej Green Estate*” project located in Sector-34, Rathdhana Village, Sonipat, Haryana. The project, having an area of 48.01 acres, is being developed under the Affordable Plotted Housing Policy 2016 of *Deen Dayal Jan Awas Yojna* and is registered with HARERA vide Registration No. HRERA-PKL-SNP-348-2022 dated 14.09.2022. Development license (No. 110 of 2022) was issued by the Directorate Town and Country Planning (DTCP), Haryana, on 10.08.2022.
3. The complainant booked Plot No. A056 measuring 91.44 sqm under application No. GODGE-A056 dated 05.03.2023. A Builder Buyer



Agreement was executed on 31.03.2023 and registered on 19.04.2023. The complainant paid an amount of ₹16,44,849/- out of the total agreed basic sale consideration of ₹63,85,388.54/-.

4. On 15.10.2023, complainant requested for refund via a letter sent on 16.10.2023. The respondent company issued a cancellation notice dated 23.10.2023 but failed to process the refund of the complainant.
5. Respondent didn't comply with Conditional Completion Certificate dated 29.03.2023 such as:-
 - i. Failure to construct two Sewage Treatment Plants (STP) and share compliance reports.
 - ii. Non-installation and maintenance of a rooftop rainwater harvesting system.
 - iii. Non-transfer of land under roads and green belts to the authorities.
 - iv. Respondent also violated conditions of DTCP's License No. 110 of 2022 such as selling over 50% of saleable area before completing internal development works and by not transferring 10% of the licensed colony area free of cost to the government for community facilities.



v. Respondent also failed to adhere to the conditions Yojna and DTCP policies by selling plots before obtaining HARERA Registration Certificate. The respondent company has not constructed promised amenities, including the clubhouse, open-air theatre, lotus pond, senior citizen area, and kids' play area.

6. The respondent threatens to create third-party rights in the booked unit without refunding the complainant, risking multiple sales of the same property. The complainant alleges that his investment was based on false promises and representations by the respondent, who has failed to fulfill obligations as per the Builder Buyer Agreement and applicable laws.

B. RELIEFS SOUGHT

7. Complainant has sought following reliefs:

- i. To direct respondent to Refund Rs 16,44,849/- deposited by complainant along with interest at the prescribed rate from the date of deposit till the date of refund.
- ii. To impose exemplary penalty and initiate penal proceedings against respondent company for violation of provisions of Real Estate Regulation and Development, Act 2016.
- iii. Any other relief which this Hon'ble authority deems fit and proper.



C. REPLY ON BEHALF OF RESPONDENTS

8. Respondent filed a detailed reply on 04.07.2024 wherein they have asserted that the complainant purchased the property for investment purposes and is thus not entitled to a refund as per the terms of the Agreement to Sell (ATS).
9. That as per clause 8.6 of the ATS dated 31.03.2023, the Complainant can withdraws from the project only by providing a 60-day notice. If the withdrawal is without fault on the respondent's part, the respondent is entitled to forfeit amounts specified in Clause 5.2 of the ATS.
10. As per Clause 8.7, once the Completion Certificate is obtained, neither party can terminate the ATS unless the buyer defaults. The Complainant's failure to take possession or respond to the Possession Intimation Letter allows the Respondent to forfeit relevant amounts.
11. The Complainant failed to pay dues amounting to ₹56,99,150/- (principal) and ₹5,62,912/- (interest). Despite multiple reminders, the Complainant neglected to make payments and instead requested cancellation citing financial incapacity.



12. That only ₹16,44,849/- was paid by the Complainant against a total sale consideration of ₹83,47,475.91. The ATS explicitly stipulates a 10% earnest money clause, considered a genuine pre-estimate of damages and non-refundable. Refund requests for the paid amount were declined based on the ATS terms.
13. That the complainant booked Plot A056 in "Godrej Estate," Sonipat, for ₹83,47,475.91/- via Application Form dated 05.03.2023. Payments were delayed and eventually halted, with a cancellation request sent on 31.05.2023. The respondent offered to explore alternate payment plans for Plot A055, but the complainant failed to fulfill dues.
14. The Completion Certificate for the project was issued on 29.03.2023, and possession was offered soon thereafter. The Complainant neither accepted possession nor cleared outstanding payments.
15. The Respondent followed all terms and conditions of the ATS and fulfilled its obligations, including obtaining approvals and certificates. Non-payment caused financial hardship for the Respondent, including the inability to sell the plot to another buyer. The Respondent argues that the Complaint lacks substance and is filed with unsubstantiated claims. It seeks dismissal of the Complaint as false, vexatious, and devoid of any actionable merit.



16. That the complainant admitted financial incapacity in an email dated 31.05.2023, requesting a transfer of funds to another booking (Plot A055).

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

17. Learned counsel for complainant reiterated that the Builder-Buyer Agreement was executed between the parties on 31.03.2023, with the conditions that possession will be handed over by 31.03.2025. The completion certificate was issued to the respondent on 29.03.2023, but the respondent allegedly failed to comply with certain conditions stated in the certificate. As a result, the complainant sought a refund of the paid amount and the respondent acknowledged this request but issued a cancellation notice on 23.10.2023. The complainant also highlighted that as per Clause (d) of the completion certificate, respondent was required to maintain a rooftop rainwater harvesting system, which was not operational.
18. The Authority, however, inquired whether the complainant had raised a complaint with the DTCP regarding the non-compliance with the conditions of the completion certificate, and why the complainant was seeking a refund despite the completion certificate being issued. In response, the complainant's counsel argued that the failure of the respondent to fulfill the conditions of the



completion certificate led to the request for cancellation, citing that common areas listed in the completion certificate had not been constructed/ developed.

19. The counsel for the respondent countered that the complainant was attempting to exit the project and referred to an email from the complainant, dated 31.03.2023, in which the complainant identified himself as an investor in the Godrej Project, implying that the complainant was not genuinely seeking possession but was looking for reasons to exit. The respondent also argued that the complaint is premature, as the deemed date of possession has not yet arrived. Regarding the refund, respondent stated that they are willing to process the refund, but after deducting the earnest money in terms of agreement to sale.

E. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled for refund of the amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as follows:



21. The That the complainant had booked a plot in the real estate project; "Godrej Green Estate" being developed by the promoter namely; "Oasis Landmark LLP" and in consonance to the same, complainant was allotted plot no. A056, admeasuring 91.44 sq. mtr. in the project known as "Godrej Green Estate" situated at Sector-34, Rathdhana Village, Sonipat, Haryana via Application no. GODGE-A056 dated 05.03.2023. The Builder Buyer Agreement was executed between the parties on 031.03.2023. Complainant has paid a total sum of ₹16,44,849/- against the total sale consideration of the unit amounting to ₹83,47,475.91/- . Respondent received a conditional completion certificate from the competent Authority on 29.03.2023. On 15.10.2023, the complainant requested a refund via a letter sent to the respondent on 16.10.2023. Instead of refunding the amount to the complainant, respondent issued a cancellation notice to the complainant on 23.10.2023.
22. As per Clause 8.1 of the agreement for sale "*The promoter, based on the approved plans and specifications shall offer possession of the plot on or before 31.03.2025.....*" As clearly stated in the agreement, deemed date of possession as per agreement is **31.03.2025**.
23. The first issue to be adjudicated by the Authority is whether present complaint is maintainable before the Authority or not?



24. The complainant's request for a refund is based on the assumption that the developer has failed to deliver the property, even though clause 8.1 of the Builder-Buyer Agreement clearly specifies that possession of the plot is due on or before 31.03.2025. This date is yet to pass, and as per the terms of the agreement, developer is not in breach of any obligations related to possession. The Real Estate (Regulation and Development) Act, 2016 (RERA) specifically governs such disputes and outlines that complaints regarding possession or delivery of property can only be filed once the agreed possession date has passed. In this case, since the possession is legally due within the agreed timeframe and no default has occurred on part of respondent in delivering possession of booked unit. Moreover, RERA provides a structured framework for resolving such issues. However, it is pertinent to mention here that complainant is praying for refund of paid amount in terms of RERA Act, 2016 but the provisions of Section 18 (Return of amount and compensation) has not been yet invoked in present case due to the fact that respondent's inability to deliver the possession is not the reason to seek refund. Section 18 of RERA Act,2016 is reproduced below for reference.

“18. Return of amount and compensation-(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 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 the cases 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 or 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.”

Perusal of aforesaid provisions clearly provides that respondent-builder is liable to refund the paid amount with interest only if conditions prescribed in clause (a) and (b) exists between the parties. In present case, it is not the case that respondent is unable to deliver the possession. Fact is that complainant has not made payment in furtherance of buyer agreement and had already expressed his wish to withdraw from the agreement, that too before the deemed date of possession. Hence, claim of complainant for refund as per Section 18 of RERA Act, 2016 is not admissible.

25. Complainant's Counsel at the time of arguments has taken a plea (verbal submission) that respondent has not complied with the conditions given in the Conditional Completion Certificate such as failure to construct two Sewage Treatment Plants (STP), non-installation and maintenance of a rooftop



rainwater harvesting system and non-transfer of land under roads and green belts to the authorities. In this regard, Authority observes that it is crucial to identify the competent authority responsible for ensuring compliance with the conditions stipulated in the completion certificate. Reference can be made to Section 4.10 and 4.12 of The Haryana Building Code, 2017, which is reproduced for reference:

Clause 4.10 (6) of the Haryana Building Code, 2017:-

If the owner or Architect or Engineer or Consultant as mentioned in Code 4.10(1)(i), (iv) and (v) as the case may be, submits a wrong report while making application under this Code or if any additional construction or violation is reported to exist at site or has concealed any fact or mis-represented regarding completion of construction of building along with its eligibility for seeking occupation certificate or before the completion of such report, he shall be jointly and severally held responsible for such omission and complaint against the Architect for suspension of his registration and the owner shall be liable to pay for the penalty as may be decided by the competent authority after giving an opportunity of hearing. Further, if it is emerged that the information is concealed by Engineer/ Consultant/ Owner, necessary penal proceedings will be initiated along with debarring Engineer/ Consultant/ Architect from practicing in the State of Haryana.

Clause 4.12 of the Haryana Building Code, 2017:-

In case, after the issuance of occupation certificate, if found at any stage that the building is used for some other purpose against the permission or make any addition/ alteration in the building then, after affording personal hearing to the owner, the Competent



Authority may pass orders for revocation of occupation permission and the same shall be restored only after removal of violations.

26. Authority is of the view that on conjoint reading of both the provisions of the Haryana Building Code, 2017, it is clear that authority for issuance and revocation of completion certificate is with the "Competent Authority" elucidated in referred code. The said "Competent Authority" in the State of Haryana is the Director, Town and Country Planning Department (DTCP). Clause 4.10 clearly designates the DTCP or other competent authorities as responsible for issuing and ensuring compliance with the Completion Certificate. It further provides that any compliance-related matters, such as fulfillment of conditions stipulated in the certificate, are subject to verification and enforcement by the DTCP and clause 4.12 provides the DTCP the authority to revoke a Completion Certificate if the developer is found to have violated the conditions or provided false information. In the captioned complaint, the complainant has alleged that the respondent failed to meet the conditions attached to the Completion Certificate, specifically citing non-compliance with requirements such as constructing Sewage Treatment Plants (STPs), maintaining rooftop rainwater harvesting systems, and transferring land under roads and green belts to the relevant authorities. Upon review, the Real Estate Regulatory Authority (RERA) notes that such matters



do not fall within its jurisdiction. According to the Haryana Building Code, 2017, and other applicable laws, the Department of Town and Country Planning (DTCP) is the competent authority responsible for issuing, monitoring, and ensuring compliance with Completion Certificates. DTCP is mandated to oversee urban development, adherence to approved plans, and fulfillment of conditions associated with completion or occupation certificates. Also, as per **Section 37 of RERA Act of 2016**, Authority for the purpose of discharging its functions under the provisions of said Act or rules or regulations made thereunder, ***issue directions to the promoters or allottees or real estate agents***, as the case may be, as it may consider necessary and such directions shall be binding on all concerned. Meaning thereby, under RERA Act, 2016, directions can be issued to ***promoters or allottees or real estate agents*** and not to the Government/departments.

27. It is to mention here that RERA's mandate, under the Real Estate (Regulation and Development) Act, 2016, is primarily to address disputes between allottees and developers related to possession delays, quality issues, and other obligations under the registered Builder-Buyer Agreement. It does not extend to matters concerning the conditions of a Completion Certificate, which remain under the exclusive domain of the DTCP. Therefore, the complainant




is advised to approach the DTCP for redressal of grievances regarding the alleged non-fulfillment of Completion Certificate conditions by the respondent, as RERA does not possess the jurisdiction to adjudicate such issues.

28. Moreover, in this complaint, the respondent allotted the plot to the complainant under the Deen Dayal Jan Awas Yojna and, upon cancellation of the allotment on 23.10.2023, was obligated to refund the amount paid by the complainant in terms of provisions of Clause 5.2 of agreement. Said clause provides that if the complainant withdraws from the project without there being any default on the part of the respondent, then respondent shall be entitled to forfeit the booking amount and refund the balance amount without interest as per applicable laws. Booking amount as such is defined in clause 2.3.1 which provides that booking amount shall mean 10% of the Total price. However, the respondent failed to process the refund till date. Therefore, both parties are at fault: the respondent for not processing the refund as required, and the complainant for prematurely seeking relief before the agreed possession date. The respondent should fulfill their obligation by processing the refund in terms of buyer agreement as stated above in this paragraph and



shall refund the amount after deducting 10% of total sale price, i.e. Rs 8,34,747/- out of paid amount of Rs 16,44,849/-.

29. In view of above-mentioned terms, Authority directs the respondent to refund the amount of Rs. 8,10,102/- to the complainant within 90 days of uploading of this order.
30. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]