

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

Complaint no. : 3558-~~1331~~ of

2018

Date of decision : 12.10.2021

ANITA SARDANA
R/O : 7 E, BB-Block,
Janakpuri,
New Delhi-58

Complainant

Versus

M/s OASIS LANDMARKS LLP
Address : Godrej One, 5th Floor,
Pirojshanag, Eastern Express Highway,
Vikhroli(East), Mumbai-400079

Respondent

APPEARANCE:

For Complainant:
For Respondent:

Rohit Oberoi - Advocate
Kapil Madan - Advocate

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ORDER

1. This is a complaint filed by Anita sardana (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.
2. As per complainant, on 14.05.2015, she booked a flat in project "Godrej Icon", situated at sector-88 A, 89 A, Gurugram through transaction agreement with agent of respondent. She (complainant) made payment of Rs 5,00,000 as booking amount. The respondent allotted a unit no. Iconic-1702 admeasuring carpet area of 1256.9 sq. ft. and super built up area of 3008 sq. ft. for a total consideration of Rs 2,36,81,472 including BSP, EDC, IDC etc. A buyer's agreement dated 27.05.2016 was executed between them.
3. Subsequently, on 30.11.2016, complainant requested for change of unit to a smaller size unit to 2 BHK due to financial constraint and to explore buy back and/or cancellation option as well The respondent made complainant to sign a fresh booking application for the new unit dated 25.04.2017 and transferred the money paid towards the old unit no. Iconic-1702 to new unit no. C0101.
4. The respondent raised 4th instalment for the new unit without completing the construction work for the said stage. There was inordinate delay in signing of buyer's agreement for the new



unit and to address its faults, respondent issued credit not of Rs 2,82,927 in favour of complainant.

5. On 04.01.2018, complainant received allotment letter dated 23.12.2017 wherein, it was mentioned that respondent had received only 20 % of total sale consideration instead of actual receipt of 40 % of sale consideration.
6. The complainant served a legal notices dated 19.01.2018, upon respondent due to discrepancies in allotment letter and faults on the part of respondent and requested for refund of money with interest.
7. The respondent changed the project plan without prior consent of allottees and even the builder entity was changed which was intimated to the complainant later on. She (complainant) served a 2nd notice of cancellation dated 09.07.2018, protesting major changes in project without prior intimation and consent of complainant.
8. The complainant received a BBA for the unit no., C0101, but she did not sign the said buyer's agreement as she was not in agreement with the change in booking amount from Rs 5,00,000 to 20 % of cost of unit and change in sanction plans and other terms and condition. The respondent changed the sanctioned plan without prior intimation and consent. Respondent increased the number of flats and reduced the green area.
9. The complainant filed a complaint before HRERA, Gurugram and sought refund of money. The complaint was disposed of by the

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Authority vide order dated 29.01.2019 and wherein it was held that respondent has right to cancel the unit after forfeiting 10 % of the total sale consideration. The respondent was directed to refund the balance amount deposited by the complainant, along with prescribed rate of interest i.e. 10.75 % within a period of 90 days from the date of order.

10. The complainant challenged the said order before Appellate Tribunal- Chandigarh. The appeal was allowed by Appellate Tribunal – Chandigarh vide order dated 15.05.2019 and order of authority dated 29.01.2019 was set aside and it was held that forfeiture of 10 % of sale price is not justified as both the parties admitted that the allotment in favour of complainant has not been cancelled. Relying upon the decision in the matter of **Sameer Mahwar v M.G. Housing Pvt. Ltd (Appeal No. 6/2008)**, HREAT – Chandigarh, transferred the complaint to the adjudicating officer, Gurugram for adjudication in accordance with law.

11. Contending all this, complainant has sought, refund of entire principal Amount as has already been paid i.e. Rs. 52,43,595.37/- along with interest @ 15% per annum (monthly compounded) from 30th April 2015 till 31st July 2019, along with pendente-lite and future interest at the same rate; Rs. 24,00,00,000 towards loss of appreciation on the booked property @ 5% per annum since 15th May 2015 till

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31st July 2019; Rs. 12,00,000/- (Rupees Twelve Lakhs Only)
@ 10% of the cost of property towards mental and physical harassment, mental agony, and damages / penalty which is same as the 10% earnest amount; Rs. 3,00,000/- (Rupees Three Lakhs) towards litigation fees and other litigation expenses

12. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Godrej Icon", Sector 88 A, 89 A Gurugram, Haryana
2.	Project area	9.359 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	85 of 2013 dated 10.10.2013 valid up to 09.10.2024
5.	Name of licensee	Oasis Landmarks LLP
6.	RERA Registration	Registration No. 54 of 2017 dated 17.08,2017
UNIT DETAILS		
UNIT DETAILS AS PER OLD BBA		
5.	Unit No	ICONIC 1702

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6.	Unit Measuring	1256.9 sq ft Carpet Area or 3008 sq ft Super Built Up Area.
7.	Date of Booking	14.05.2015
9.	Date of Buyer's Agreement	27.05.2016
10.	Total Sale Consideration	Rs 2,36,81,472/-
UNIT DETAILS AS PER NEW BBA (NOT EXECUTED BY COMPLAINANT)		
11.	Unit No	C 0101
12.	Unit Measuring	881.34 sq ft Carpet Area or 1085.2 sq ft Super Built Up Area as per Allotment Letter
13.	Date of Booking	25.04.2017
14.	Date of Allotment Letter	24.12.2017
15.	Date of Buyer's Agreement (Agreement Stamp Date 11.07.2018)	Not Executed (Sent by Respondent but not signed by Complainant)
16.	Total Sale Consideration	Rs 1,16,74,082/-
PAYMENT DETAILS		
18.	Amount Paid as per Statement of Account dated 20.01.2018	Rs 52,43,595.37/-

13. Despite filing any written statement, the respondent filed an application seeking stay of proceedings. It is mentioned that a Writ Petition bearing No.17120 of 2020 titled-Mrs Anita

Ans
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Sardana & Ors Vs Oasis Landmarks LLP and others, has been filed by some persons including present complainant, before Hon'ble Punjab & Haryana High Court at Chandigarh. According to learned counsel for respondent till decision of said writ petition, this complaint is liable to be adjourned sine die, as matter involving same issues is pending before the Hon'ble High Court, this forum should not proceed with this case.

14. As per learned counsel for complainant subject matter of said writ petition and complaint in hands are different, his client i.e. the complainant has sought refund of the amount before this forum but no such relief has been claimed before Hon'ble High Court. A copy of Writ Petition has been annexed by the respondent alongwith their objections. The petitioners including present complainant have prayed Hon'ble High Court, to issue writ in the nature of Mandamus or any other appropriate writ, order or directions of similar nature ordering respondent No.1 and respondent No.2 (State of Haryana and Haryana Real Estate Regulatory Authority)

(i) not to issue the completion certificate and occupation certificate/registration certificate to respondent No.3 to 5 i.e. M/s Godrej Properties, M/s Oasis Landmarks LLP and M/s Oasis Build Home Pvt Ltd., and/or



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(ii) issue a writ in the name of Mandamus or any other appropriate order etc.....ordering respondent No.2(Harera) to take cognizance of illegalities committed by the respondents No.3 to 5 and revoke all licenses and registration certificate granted in favour of said respondents, and/or

(iii) to direct respondents No.3 to 5 not to enter into any more agreement for sale of units with third parties and/or

(iv) direct respondent No.1 and respondent No.2 not to issue completion certificate and occupation certificate, further registration.

15. True, no such claim for refund has been prayed by the present complainant in said writ petition. In this way, I see no reason to adjourn this complaint sine die i.e. till decision by Hon'ble High Court, in aforementioned writ petition.

16. As mentioned above, respondent did not file any reply. In such a circumstance, contentions raised by the complainant are presumed to have been admitted by respondent.

17. According to complainant, same booked a residential flat/dwelling unit bearing No. 1702 through respondent's real estate agent i.e. 360 realtors in its (respondent's) project 'Godrej Icon' by paying Rs.5,00,000/- as booking amount. On request of complainant, said unit was changed to unit no. C-0101 from Iconic 1702. In fresh allotment letter, respondent

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mentioned having received 20 % of sale consideration while latter had received 40 % of sale consideration. Respondent changed project plan without consent of allottee i.e. complainant. On her complaint, the Authority allowed refund of amount after deducting 10 % of cost of property and on appeal by complainant, Appellate Tribunal, set aside said order. It was held by Hon'ble Appellate Tribunal that forfeiture of 10 % was not justified. In these circumstances, complainant is entitled to get entire amount paid by her to respondent, refunded with interest.

18. The complaint in hands is, thus, allowed. Respondent is directed to refund the amount along with received from complainant till now i.e. Rs 52,43,595.37/- within 90 days from today, along with interest @ 9.3% p.a. from the date of receipts till realization of amount. The respondent is burdened with cost of litigation ^{etc} Rs 1,00,000 to be paid to the complainant.

File be consigned to the Registry.

12.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 28.10.2021.