

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

**Complaint no. : 2744 of 2020**

**Date of decision : 01 .09.2021**

**AJAY VOHRA.**

**R/O : H. No. -A-11/31, 1<sup>st</sup> Floor,  
DLF Phase-1, Gurgaon-122002**

**Complainant**

**Versus**

**1.M/s GODREJ PROPERTIES**

**Address : Godrej One, 5<sup>th</sup> Floor,  
Pirojshanag, Eastern Express Highway,  
Vikhroli(East), Mumbai-400079**

**2. M/s OASIS LANDMARKS LLP**

**Address :3<sup>rd</sup> Floor, Town B, UM House,  
Plot No. 35, Sector-44  
Gurugram, Haryana-122001**

**3. M/s OASIS BUILDHOME PVT. LTD.**

**Address : 6, Jwala Heri Market,  
Near MDI Market, Paschim Vihar  
New Delhi-110063**

**Respondents**

**APPEARANCE:**

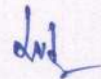
**For Complainant:  
For Respondents:**

**Rohit Oberoi (Adv)  
Kapil Madan (Adv)**



**ORDER**

1. This is a complaint filed by Ajay Vohra (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 respondents/promoters.
2. As per complainant, on 15.04.2015, he booked a flat in project "**Godrej Icon**", situated at sector-88 A, 89 A, Gurugram. He made payment of Rs 5,00,000 as booking amount. The respondent vide an allotment letter dated 20.01.2016 allotted a unit admeasuring carpet area of 1256.9 sq. ft. and super built up area of 1779 sq. ft. for a total consideration of Rs 1,36,82,961 including BSP, EDC, IDC etc. A buyer's agreement dated 23.12.2016 was executed among them.
3. As per Clause 4.2 of buyer's agreement, possession of said premises was proposed to be delivered within 48 months from the date of issuance of allotment letter with grace period of 6 months. The respondents failed to complete the construction work and consequently failed to deliver the same till date.



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4. As per payment plan opted by the complainant, he made timely payment of Rs 1,14,36,824, i.e. 80 % of entire agreed sale consideration, along with miscellaneous and additional charges etc, but to his utter dismay, the possession of the apartment has not been delivered in finished manner as agreed in buyer's agreement.
5. The respondents unilaterally changed the sanctioned plan. The size of the project has been reduced from 9.358 acres to 6.459375 acres, the number of dwelling units and towers have been increased, without prior consent of the allottees.
6. The respondents have committed gross violation of the provisions of section 18(1) of the Act, and complainant is forced to file present complaint, seeking refund of entire amount of Rs 1,14,36,824, along with interest from the date of respective deposits till its actual realisation, Rs 200000 towards harassment and mental agony, Rs 1,00,000 towards cost of litigation.
7. The particulars of the project, as detailed by complainant in tabular form are reproduced as under:

S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
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**

1.	Unit no.	C 1102
2.	Unit measuring	Carpet area : 1256.9 sq. ft. Super built-up area: 1779 sq. ft.
3.	Date of Booking	15.04.2015
4.	Date of Allotment Letter	20.01.2016 (Pg. No. 80)
5.	Date of Buyer's Agreement	23.12.2016 (Pg. No. 85)
6.	Due Date of Delivery of Possession  As per Clause No. 4.2: The possession of the said premises is proposed to be delivered within 48 months from the date of issuance of Allotment letter with grace period of 6 month. (Pg. No. 97)	20.07.2020
7.	Delay in handing over of possession till date	1 year 1 month

**PAYMENT DETAILS**





8.	Total sale consideration	Rs 1,36,82,961 /-
9.	Amount paid by the complainant	Rs Rs 1,14,36,824
10.	Payment Plan	Flexi Possession Linked Plan

8. On 12.01.2021, the request of the respondents, the latter were allowed to file written reply, within 15 days before next date fixed which was 24.03.2021. At the same time, the same were directed to file complete documents consisting of sanctioned plan of the project/allotted unit, statement of account of unit of the complainant, environment clearance certificate and latest status report of the project along with written reply. Neither any reply was filed nor documents mentioned above.

9. 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 as **Mrs Anita Sardana & Ors Vs Oasis Landmarks LLP and others**, has been filed by the petitioners including present complainant, before the Hon'ble Punjab & Haryana High Court at Chandigarh. Similarly, an application captioned as objections was filed again by the respondent at the time of final arguments. According to learned counsel for respondent till decision of said writ petition, this

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complaint is liable to be adjourned sine die, as same matter is pending before the Hon'ble High Court.

10. 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 the Hon'ble High Court, to issue writ in the nature of Mandamus or any other appropriate writ, order or directions of similar nature etc ordering the 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

(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.

11. True no such claim for refund has been prayed by the 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. As mentioned above, respondents did not file any reply. In such a circumstance, contentions raised by the complainant are presumed to be true. As according to complainant, same booked 3 BHK Type B unit i.e. Unit No.C-1102 in respondent's project by paying Rs.5,00,000/- as booking amount. The booking was under 20:20:60 plan though 60% was to be paid at the time of possession. It was informed to the complainant that booking can be under 20:20:40:20 which was not acceptable to him. After making a lot of requests, the scheme was changed to 10:10:40:20. Last two instalments were to be paid within six months of possession being offered. Till January, 2016, the complainant paid 20% of cost of property/unit without any BBA, having been executed. Allotment letter was received after 8 months of having paid booking amount i.e. 20.01.2016. The respondents had received further 20% of cost of property till then. The possession of unit was to be handed over within two years



after of furnishing work(As per payment demand being raised by the respondent) within 19 months of date of booking. Respondent were paid 40% of total cost of property.

12. BBA was received on 23.12.2016 but name of respondent No.1 was missing. It was mentioned in the BBA that construction will be completed within a period of 46 months with grace period of six months thereafter. On being contacted, complainant was assured that possession will be handed over in Nov.2018. He was asked to arrange for funds.
13. From August, 2016, respondents started pressurizing him for immediate payment of remaining amount. The complainant was constrained to avail financial assistance in terms of home loan from M/s Indiabulls Housing Finance Ltd and paid enormous interest. Despite lapse of about two years, no construction was started and respondents failed to disclose as when possession of his unit will be handed over to him (complainant). Till mid 2018, the project was nowhere near completion.
14. It is contended by learned counsel for complainant that his client was mis-represented that said project was to be constructed by Godrej Properties, a famous Godrej company but later came to know that name of Godrej was misused by other respondents and it was not a project of M/s Godrej company.

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15. Photo copy of brochure has been put on file, where the project is advertised as Godrej Icon, Sector 88-A and Sector 89-A, Gurgaon. Some other documents showing Godrej Icon unit configuration and some other literature mentioning as Godrej Properties with logo of famous Godrej company are filed by the complainant. During deliberations, it is admitted by learned counsel representing the respondent that it was not project of that famous Godrej company. According to him, it was project named i.e. M/s Oasis Landmarks LLP being developed by respondents other than M/s Godrej, a famous company. Printed material advertised by respondent developers (other than respondent no. 1) was misleading to customers, like complainants. I have no reason to disbelieve learned counsel for complainant alleging that his client was misled on mis-representation by those respondents that it was a project of famous Godrej company.
16. The developers were duty bound to give every detail of their project to the buyers but in spite of giving correct information, in my opinion, respondents mis-represented and tried to mislead the complainant by using the name and logo of famous Godrej company. The complainant is thus, entitled to get the amount refunded alongwith interest and compensation.

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17. The complaint in hands is, thus, allowed.

Respondents/developers (other than respondent no. 1) are directed to refund the amount received from complainant till now i.e Rs 1,14,36,824 within 90 days from today along with interest @ 9.3% p.a. from the date of receipt till realization of amount. Said respondent are further burdened with cost of Rs.1,00,000/- to be paid to the complainant.

File be consigned to the Registry.

01.09.2021

  
(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 11.09.2021.

**HARERA**  
**GURUGRAM**