BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**2640 of 2021**
Date of filing complaint	**07.07.2021**
Date of decision:	**16.08.2023**

Mrs. Meenu Yadav **R/o.** House No. 3267, Sector-23, Gurugram, Haryana– 122017	**Complainant**
Versus	
1. M/s. Godrej Properties, Registered Office at: Unit No. 5C, 5th Floor, Godrej One, Pirojshanagar, Vikhroli East, Mumbai – 400079 **2. M/s. Oasis Landmarks LLP** Regional Office at: 3rd Floor, Tower B, UM House, Plot no. 35, Sector 44, Gurugram, Haryana – 122001 **3. M/s. Oasis Buildhome Private Limited** Registered Office at:6, JwalaHeri Market, Near MDI Market, Paschim Vihar	**Respondents**

CORAM:	
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Shri Rohit Oberoi (Advocate)	Complainant
Shri Saurabh Gauba (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee 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) 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 provision 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Details
1.	Project name and location	Godrej Icon, Sector 88A and 89A, Gurugram
2.	Project area	14.684 acres
3.	Nature of project	Group Housing Project
4.	RERA registered/not registered	Registered vide 50 of 2017 dated 12.08.2017 valid upto 31.12.2020.
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013 valid upto 09.10.2024 151 of 2014 dated 05.09.2014 valid upto 04.09.2024
6.	Name of the Licensee	Oasis Buildhome Pvt. Ltd.
7.	Provisional allotment letter dated	30.10.2015 (Page 80 of complaint)
8.	Unit no. as per the buyer's agreement	A0603, 6th floor, Tower A (Page 109 of reply)
9.	Unit measuring	1617 sq. ft. (carpet area)
10.	Date of execution of buyer agreement	15.01.2016 [Page 87 of reply]
11.	Due date of delivery of	30.04.2020

	possession as per clause 4.2 of the said agreement i.e., 48 months from the date of issuance of allotment letter along with grace period of 6 month over and above this period	Grace period is allowed as the same is unqualified.
12.	Endorsement	Date not mentioned. (Page 78 of reply)
13.	Total consideration as per BBA on page 111 of reply	Rs. 1,17,23,453/-
14.	Total amount paid by the complainant as per statement of account dated 23.10.2018 at page 89 of complaint	Rs. 1,17,06,834/-
15.	Indemnity cum Undertaking	26.12.2019 (Page 83-84 of complaint)
16.	Occupation certificate	18.09.2020 for towers 6-10 and EWS BLOCK but the complainant's unit is in tower A (Page 275 of reply)
	Date of offer of possession to the complainant	Not offered
17.	Legal Notice sent by the complainant to the respondent for refund the entire amount dated	14.05.2021
	Remarks, if any	The complainant is a subsequent allottee and the unit was endorsed to her vide endorsement letter but the same is undated. The endorsement letter however is not signed by witnesses.

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

i. That in the year 2015, that the original allottee (daughter of the complainant) came to know about the project titled as *'GODREJ ICON'* at Sector 88A and 89A, Gurugram, Haryana. The project plan appended with the project brochure was being marketed with a commitment made by the respondents of huge discounts and a payment plan of 20:20:60 to the original allottee, just to lure the unsuspecting customers. That the respondents in their own marketing material had made such lucrative promotional offers to her as well as to the other allottees. The amenities offered and other luxurious services as were committed by the respondents included but not limited to a Skywalk @ 130 feet, star gazing platform, party deck, barbeque counter, reflexology court, zen garden, a kilometre long jogging track & yoga and meditation area all at a height of 130 feet also including a 32-storey *iconic tower* with Helipad. It is submitted that alongside the above, the respondents had offered a luxury living with international standard amenities such as *"Club Concierge, Spa and Holyfield Gym"* alongwith a club aqua and an infinity pool. It is further submitted that one amongst the aforementioned amenities also being the most prominent one was its low-density development with a density of less than 40 units/acre (356 units in 9.1 acres), as was committed to her at the time of booking, being the main reason for the original allottee to book in the said project.

ii. That the original allottee mustered all her life savings and hard-earned money and booked a 2BHK+ study (Type A) unit measuring 1617 sq. ft. bearing Unit No. A0603 in the respondent's

Icon project by paying an amount of Rs. 5 Lakhs as booking amount on 11.05.2015. Thus, reposing her trust in a household brand having over 100 years presence in India and being given the commitment that the respondents would stand by their commitments as they have done so far in the industry. The booking was under 20:20:60 plan with 60% to be paid at possession as per the commitment of the officials of the Respondents. It is stated that the project was sold by M/s. Godrej Properties with the name suggesting that the said project is a Godrej project. It was at the time of signing the application form that the complainant's daughter for the first time got to know that the project is being made by one Oasis Landmarks LLP.

iii. The complainant's daughter who expressed her anguish that she was being misled was informed that the respondent no. 2 is a company of the respondent no. 1 and has been created by the respondent no. 1 to make the project and the project will always be the project of the respondent no.1 and even the application form stated OBPL as a joint development partner. Post the signing of the application form it was informed to the complainant that the booking would be under 20:20:40:20, which was not acceptable to the Complainant's daughter and thereafter, after making a lot of requests was able to get it changed to 10:10:20:40:20, it was further clarified that the last two instalments would be payable within six months of possession being offered. The same was reflected in the application form dated 11.05.2015 as well as in the builder buyer agreement dated 15.01.2016.

iv. That the complainant's daughter believing the representations made by respondents relented and signed the said form. It is stated that respondent's nefarious intentions surfaced right at the initial stages, when on the very second payment stage which was to be made within 60 days, respondents tried to dupe the original allottee by telling her that her cheque got bounced when the cheque was never presented and thereafter came up with a fabricated story that the account number is incorrect in the cheque and when the complainant's daughter confronted respondent's with the fact that both the cheques were given from the same cheque book and of the same account, then how could one be ok and the other be defective, respondent's officials had no answer.

v. That the original allottee kept on making the payment as pre the payment schedule and till October 2015 had made payment of 20% of the cost of the flat as was agreed upon. It is pertinent to mention that the she had already made a payment of 20% of the cost of property without the builder buyer agreement (BBA) having been executed or even getting an allotment letter from the respondents. This was done inspite of requests having been made and categoric commitments by the officials of the respondents that they shall provide the allotment letter within 45 days of the booking and the BBA within 45 days thereafter, same were the terms of the application form. Thus, the respondents were in breach of their own terms from day one of the offer of the project to the complainant's daughter and continued breaching their own terms.

vi. That on 30.10.2015, after more than 5 months of having paid the booking amount, received an allotment letter wherein the total sale consideration was mentioned as Rs.1,17,23,453/- wherein it was categorically mentioned that the builder buyer agreement (BBA) has to be signed within 45 days and in case it is not signed then the same shall entail cancellation. It is pertinent to mention that the BSP of the apartment was Rs.97,00,383/- and the PLC was Rs. 2,02,125/- and the respondent were charging an amount of Rs. 3,75,000/- for car parking which is not only illegal but also usurious.

vii. That she was in utter shock when within 2 months of signing of the BBA, she had received a demand for further 20% of the cost of property which was to be slated to be demanded at the time of completion of superstructure. The said invoice/ demand for payment were raised within a span of 10 months of paying the initial booking amount and within 2 months of signing of the BBA. However, the respondents had intimated the complainant that the said demand would not be raised before May, 2017, *albeit* even then the said demand was much prior to the earlier commitment wherein they had committed to the complainant that the entire payment was to be made in a phased manner over the period of 46 months. It is submitted that at the time of booking it was committed by the officials of the respondents that such milestone shall only be achieved prior to handing over of possession not earlier than two years from the date of booking thereof. It would be apposite to submit that the complainant and her daughter are upright citizens who made sure that any and all payments as

demanded by respondents are made on time and ensured that even if they had to take a loan, respondents' payment is made on time. The builder buyer agreement was executed between respondents and the original allottee on 15.01.2016, although many of the terms as agreed upon and represent by respondents at the time of booking were changed without giving any intimation to the complainant's daughter. It is further stated that when she requested respondents to make changes, respondents flatly refused to such changes and categorically stated that in case the allottee wished to continue with the project, she would have to accede to the terms and in case not amenable to the same, she can withdraw however huge amounts of cancellations would be levied. The original allottee already having paid huge amounts being approximately Rs. 24 lakhs were forced to continue with the project.

viii. That she raised a query as to when the project has just been launched then how could the superstructure be completed at the given point of time, the respondents instead of giving a proper reply, threatened her in various meetings held in-person with the concerned officials of the respondents and stated that in case she wished to retain her apartment she would have to pay the amounts as and when they are demanded otherwise she shall be burdened with interest @15%. Thereafter, she resorted to a series of visitations and correspondences with the respondents thereafter, wherein the original allottee had vehemently resisted such unprincipled behaviour of the recalcitrant respondents though they claim to be a customer centric organization but was

inflexible and unwilling to co-operate with the needs of the customers. Further shocked to see that the respondents raised the demand for 20% of the cost of property within 2 months of signing of the BBA. This factum was also vehemently opposed by her and in fact it was categorically put to the respondents that if the completion of superstructure milestone is achieved by the respondents in March, 2016 then for what reasons the possession of the unit was scheduled to be handed over after a span of two years thereafter, to which the officials of the respondents had no answer, whatsoever.

ix. At this juncture, it would be most pertinent to mention that such payments as were being raised by the respondents were not only premature but also arbitrary in nature, aimed to cause undue harassment to customers such as the complainant and aimed at providing wrongful gains of the respondents, as is evident from the fact that the respondents were raising demands almost one year apart to different allotees for the same milestone. It is submitted that if such is the case that the payments as were being raised by the respondents were strictly as per the completion of construction of milestones, then in what possibilities the possession of the unit was to be given two years after the completion of finishing work *(as per the payment demands being raised by the Respondents)*. The said factum evidently goes to show that the demands being raised by the Respondents were not only premature but to enrich them by withholding her money.

x. That within a period of 10 months from the date of booking, evidently the respondents were in receipt of 40% of the cost of

property, which was intended to be a construction linked plan. Thereafter, she had approached the concerned officials of the respondents and raised queries as to why the said amount has been raised whereas the project has just started. It is further stated that the respondent no. 1 through its officials stated that the project has already reached the said stage and hence, they have raised such demands. It is submitted that her objections and in fact wished to see the location and even went and saw the location. That she was further taken aback by what lay in front of her as the tower in which her flat was booked was not at the stage of completion of superstructure and that the respondents had raised such frivolous demands. Thereafter again approached the respondents and stated her dismay at the conduct of the respondents, however, their officials stated that since some towers are at the stage, the payment is being raised and the next payment shall be raised only after a period of around two years *i.e.* to be around 2-3 months before actual possession being handed over.

xi. That, the original allottee signed and executed the builder buyer agreement (BBA) with the respondents no. 2 and 3 wherein the project land was clearly mentioned as 9.359 acres, further the name of respondent no. 1 was missing although all throughout the dealings prior to signing of the BBA and till date have been done with the officials of the respondent no. 1. It was further stated that the BBA represented that the construction shall be completed within a period of 46 months with a grace period of 6 months thereafter albeit this was in gross contradiction of their

commitment that the said period was to be from date of booking whereas in the BBA it was stated that it was from the date of allotment, i.e. 30.10.2015, thus taking advantage of the money of the Complainant for a period of 8 months. The copy of the BBA dated 15.01.2016 is had been taken away by the respondents and hence a copy of the BBA is not available with the complainant and the same may be called for from the respondents to show the malafide intent of the respondents.

xii. That the complainant who had been assured by the respondents at the time of booking that they shall receive the possession of their flat within a period of 46 months were in for a rude shock when in the builder buyer agreement, it was revealed that the date of possession would be 46 months from the date of issuance of the allotment letter apart from grace period of 6 months. That the allotment letter was only issued to the complainant after almost 8 months from the date of initial payment of the booking amount made to the respondents by the complainant. When the complainant objected regarding the said clause, the officials of the respondents promised and assured to the complainant that the contract is a pre-published contract, and they shall be handing over the possession of the apartment within a span of 46 months from the date of booking only as was also promised at the initial stage to the complainant by the respondents.

xiii. That as per the standard terms and conditions, the respondents had to handover the possession of the apartment within a period of 46 months. That a brief encapsulation of the entire chain of events would be that the complainant booked in pre-launch offer

in May, 2015, the Construction did not start till August, 2015 and in June, 2016, the entire superstructure of the project was ready. It is submitted what can be deduced from the entire sequence of events is that either the construction was done at a super fast speed such that the quality of construction was not paid heed to, or the payments were demanded when the milestones were not reached, thus, showing the *mala fide* of the Respondents. It is respectfully submitted that the Complainant had thereafter lost all their faith in the Respondents and had realized that they were dealing with people who claimed to be *Customer Centric* but were in fact a well-oiled machine who were out to fleece innocent customers of their hard earned money and extract amounts which were not even due.

xiv. That the respondents thereafter on 21.09.2016 within 6 months of having raised the invoice for payment towards the completion of superstructure demanded the payment for the next 40% which was to be made at the time when the finishing was completed i.e. when the Brickwork and Plaster work was completed in the entire building. The she being taken a back again requested the Respondents that they had committed that the said payment was to be made very near to when the possession would be offered and whether the Respondents are in a position to offer possession, to which the Respondents had no answer. The she categorically objected that such premature demands being raised by the Respondents as the project was nowhere near completion and such demand was uncalled for. It is stated that the Respondents also earlier committed that in case she made the

earlier payment of 20%, they shall deliver the possession of the flat by the middle/ end of 2018. The original allottee contacted the Respondents through various modes and raised objections to the sudden raising of an additional demand of 40% and in fact sought appointments with their various officials at all levels intimating them that such premature and arbitrary demands are disturbing her entire financial planning, as the amounts were huge and she was investing her and her families entire hard earned money and life savings into their dream home *albeit* not knowing the consequences of hardships to be faced in this regard. The Respondents though claiming to be a customer centric organization did not even pay any heed to requests of her and the Respondents replied with rigid and inflexible conditions which the Complainant's daughter could not have acceded to. It is stated that the Respondents had demanded the enormous amount which in itself was arbitrary in nature and uncalled for as was against their stipulated terms of payment plan as their pace of demanding payments from the customers, being a customer centric organization, was more than the pace of developing and constructing the project. However, she was thereafter forced to make the payment.

xv. That thereafter she demanded the status update on the construction of the property, however, the Respondents provided vague and absurd construction updates which in itself depicted that the construction was not being done at the pace at which the payments/ installments demand were being raised by the Respondents. It is submitted that the exact same updates were

sent to the owners of other flats, thus, showing the falsity of their stand and their *mala fide* intentions. It is further submitted that thereafter the Respondents had started sending construction updates from which it became evident that the milestone for which they had taken money had not even been completed and the payment had not become due. Thus, having taken advantage of their dominant position and the fact that the original allottee had already paid huge amounts and was not in a position to get forfeited the amounts; the Respondents resorted to extract money by giving false promises. The Respondents thereafter for 2 years did not raise any demand nor confirmed as to when they shall be handing possession although they had committed that they shall be handing over the same in November 2018.

xvi. That thereafter the Respondents sent a letter with a new scheme to extort money from the original allottee the Respondents had stated in their letter dated 23.10.2018, that in case she made the payment as demanded in the letter, she would be entitled to a 9% per annum rebate amounting to Rs. 1,46,064/- apart from rebate @9% per annum in the future as well for the payment so made. Thereafter even she made the payment in the early payment offer wherein was offered a discount of Rs. 1,46,064/- and a 9% per annum future rebate, however inspite of payment the said amount was not reflected in her account in the statement of account. It would be apposite to point out that after making the said payment, the Complainant had made the entire payment as was due and payable for the flat to the Respondent's however the amount towards the rebate/ interest as offered and availed by the

Complainant, till date has not been credited to the Complainant's account.

xvii. Thereafter in March 2019, she requested the Respondents to transfer the unit from her name to her mother's name i.e. the Complainant's name and in fact she kept on pursuing the same when after a period of 9 months of having religiously followed up, the Respondents accepted the documents, which included the original BBA and other documents, gave a receiving for the same and stated that the said transfer shall be done within a few days. All this was done inspite of the Complainant's daughter expressly intimating to the Respondent's that she is relocating to the U.S.A. and hence she has made the entire payment, only the flat needs to be transferred in the complainant's name. Thereafter the Complainant and her husband kept on chasing the Respondent No. 1's officials seeking appointments as well as a definitive answer as to when they shall receive the documentation of transfer and when the transfer documents shall be signed. It is pertinent to state that although the Complainant and her daughter had made the entire payment of the flat beforehand, however instead of fulfilling their promise and crediting the 9% discount per annum as was supposed to be given, the Respondent's in December 2019, sent a false and concocted statement of interest wherein they claimed an amount of Rs. 17,254.63/- as being interest on delayed whereas a bare perusal of the statement of account as provided by them evinces that all the payments were received by them within time.

xviii. That to the further shock and amazement of the Complainant, the Complainant got to know that the Respondents had also sent letters in May-June, 2018 intimating to the other allottees that the Respondents had unilaterally got the sanctioned plan changed. It is further submitted that the complainant through other allottees got to know that the respondents had sent a letter stating that there was a change in builder, which was also done without intimating the complainant. The complainant feeling helpless, was forced to contact other owners who were in the same position and were shocked to find out that the respondents had given false assurances and commitments to them also and in fact the respondents did not even bother to provide a proper reply to them also. It is submitted that the respondents had committed to various other flat owners that the project would be ready by the end of financial year 2017-18, however till the mid of 2018, the project was nowhere near completion and even the updates evinced the same. The complainant thereafter held meetings with other flat owners and the concerned officials of the respondents were called to be a part of the same and the minutes of the meetings as were held and the grievances raised were also conveyed by the complainant to the respondents, however, the respondents though claiming to be *"customer centric"*, did not bother to address them. Although in the said meeting, the officials of the Respondents kept on harping that theirs is a customer centric organization; however, the Complainant were left helpless although they were promised and assured otherwise. The Complainant thereafter kept on meeting with the officials of the

Respondents to inquire about the status of the project and why when 80% of the cost of property was demanded in 2016 than for 2-3 years the project has not been completed. The Complainant did not receive a concrete response from the officials of the Respondents who kept on demanding time to give a response. The Complainant was in for a rude shock when they got in touch with the other home buyers of the same township project, and it was apprised to them that the internal finishing was ongoing on 06.06.2017 with no further update after that providing screenshot of the project's customer portal's construction update feature as proof. It seemed apparent as to why the 40% invoice towards Internal Finishing was raised an entire year in advance while work was still under progress thereby forcing the complainant to withdraw as they would not be able to arrange the funds and the respondents could benefit from their withdrawal and illegally usurp their money in the name of forfeiture, although they were not entitled for the same.

xix. The Respondents had further failed to disclose that in their submission for getting the environment clearance, they have disclosed an increased number of dwelling units from 662 to 747 (by 13% approx.) on the total project lands (of which the Godrej icon project and Godrej oasis were a part). This was in furtherance of their aforementioned lies wherein the respondents had committed that there shall be less density of flats being less than 40 flats per acre, thus more open areas, whereas currently taking into account the reduced project land size and increase in

number of flats, the density of flats per acre has crossed more than 55 flats per acre.

xx. That as per the builder buyer agreement, while declared Project Lands in BBA is 9.359 acres - in Section 10(i), 10(ii), 10(iii), 10(v), 10(vi) & 10(xi), the respondents assure that no part of the project land is to be transferred to the Government and the respondent no. 2 has rights to market/ develop the entire project lands and that there are no encumbrances on the project lands. Further in Schedule II of this BBA, project lands when compared with the revised sanctioned project plan showcase only parcel a as part of the project lands. The said factum was also verified by the complainant and the other allottees by paying a visit to inspect the ongoing project development work. That the same is the situation in the Patwari's office wherein parcels of land which form part of the project lands have been acquired way back in 2014, but till date are being included in the project lands. It is further very disheartening that respondents are including lands which have been shown to be a part of the roads/ expressway as is being developed and is to be transferred to the government, in the project lands and thus are selling public lands as part of project lands, which is not only illegal but also does not behove a company having a 100-year legacy.

xxi. That the respondent no. 2, in their application for revised environmental clearance dated 05.12.2018, themselves disclosed to the Ministry of Environment, Forests and Climate Change that the net land available for both the projects, i.e., Godrej Oasis and Icon is 12.219 Acres. Thus, their lies have in their own documents

surfaced, which they cannot deny. That the complainant, thereafter, probing further could pull out the sanction plan from the site of the respondents, where the final sanction plan as has been sanctioned and provided to the respondents. The complainant was shocked to see stark differences in the sanctioned plan and the plan as was affixed with the BBA dated 14.12.2015. It further transpired that the total lands included lands for not only the project titled as Godrej Icon but also for the project titled as Godrej Oasis and two other parcels of land which have not been shown to be a part of either Icon or Oasis project. The same also shows material changes to the project which have been made by the Respondents which make the project totally different from the one sold to the Complainant and prejudice their rights with respect to the property-in-question. What would be really astonishing is the fact that the Respondents had issued BBA to various unsuspecting customers and in those BBAs different plans were displayed showing two separate and distinct layout plans for the project. Thereby showing their mis-selling. It is further submitted that the final project is not even close to what had been initially sold to the Complainant and differs widely.

C. Relief sought by the complainant:

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

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

ii. Direct the respondent to pay compensation and litigation costs.

D. Reply by respondents:

5. The respondents by way of written reply made following submissions:

i. That the Oasis Build Home Pvt Ltd ('OBHPL') (Respondent No.3) initially obtained license no. 85 of 2013 on a contiguous land parcel admeasuring 13.759 acres in order to develop a group housing residential society in sector 88A/89A. Thereafter vide a Development Agreement dated 22.09.2014, the development rights in the said 13.759 acres land was transferred by Respondent No.3 in favor of Respondent No.2. it is submitted that the developer accordingly got zoning plan and building plans approved from the competent authority i.e. DTCP.

ii. The said land was to be developed in phases namely phase Oasis and phase Icon. Accordingly, the Developer first launched the phase Oasis that was to be developed on the land admeasuring 4.40 acres in the year 2014. Thereafter phase Icon was launched that was to be developed on the land admeasuring 9.359 acres in the year 2015. Further, in the meantime, Respondent No.3 obtained additional license for additional land parcel admeasuring 0.925 acres from DTCP vide license no. 151/2014 dated 05.09.2014 and a second development agreement was executed on 23.05.2018. Thereafter the DTCP granted in-principal approval for the revision of the building plan on 12.04.2018.

iii. Accordingly, a letter dated 28.05.2018 was issued to all the allottees and summarized the proposed changes which are enumerated below for ease of reference:

i. Instead of the Tower 4-5, only tower 5 was to be constructed;

ii. Tower 11 and 12 were discarded;

iii. Location of Nursery school was shifted from parcel D. It is now proposed to be developed in place of tower 11-12 in parcel C.

iv. A new tower-4 will be constructed in parcel D, a convenient shopping-3, community building-3 is proposed for tower 5.

v. Revisions were made in the EWS block.

iv. Thereafter, a meeting was held on 17.07.2018 where the objections from the allottees were heard at length by DTCP. Pursuant thereto, aftern following the due process of the law, DTCP granted approval regarding revision of the building plans on 03.10.2018. It is submitted that the changes were carried out after following the due process of the law applicable at the relevant time. The Respondent reserves its right to place on record the said letter dated 28.05.2018 as and when the same is directed by this Hon'ble Commission.

It is reiterated that none of the ICON project land was used for project OASIS as alleged by the Complainant. It is submitted that the said allegation is false to the knowledge of the complainant.

v. It is submitted that thereafter the developer also applied for a change of developer as per the policy dated 18.02.2015. The additional license required the Developer to revise the building plans to incorporate the additional lands and accordingly an application for revision of building plan was filed on 21.09.2016. Thereafter, after following the due process of the law, DTCP granted approval regarding revision of the building plans on 03.10.2018. It is submitted that the building plans were revised after following the due process of the law applicable at the relevant time. It is to be noted that upon incorporation of the additional licensed land, the Developer was entitled to additional

FAR and as such the entire development of the project has carried us strictly in consonance with the sanctioned plans and approvals. As per applicable laws, the additional FAR can be utilized on the entire land for which licence is granted by DTCP.

vi. It is pertinent to mention here that there is neither reduction of the land for ICON nor the land that was meant for ICON has been used for any other project as wrongly contended by the complainants. It may not be out of place to mention here that the said revision was done prior to the enactment of relevant provisions of the RERA. It is further submitted that while revising the building plans, the Respondents had duly complied with all the applicable provisions and the changes were carried out after following the due process of the law.

vii. It is further submitted that the revision in the building plans is as per the environment norms and the Respondents have duly taken the requisite approval for the same. It is submitted that upon promulgation of the Act of 2016, all the ongoing projects were to be registered with the state authorities in a time bound manner. Please note as the compliances were to be done in a time bound manner and due to the lack of clarity of law, while obtaining the RERA certificates, phase ICON (including ICONIC) was inadvertently shown as 6.45 acres instead of 9.359 acres. Similarly, the land for the phase OASIS was inadvertently shown as 6.8 acres instead of 4.40 acres.

viii. It is reiterated that the Respondent had duly complied with all the applicable provisions and the changes were carried out following the due process of the law. It is submitted that the respondent

upon completion of the respective milestone issued the invoices to the complainant.

ix. It is submitted that the respondent carried out the construction of the project at a considerable speed and achieved the initial construction milestones. It is submitted that the respondent could complete the construction which is evident from the occupancy certificate dated 18.09.2020.

x. It is submitted that the minor delay in the completion of the project was occasioned due to the force majeure arising out of the Covid 19 Pandemic. It is submitted that the Complainant's daughter vide Email dated 05.03.2019 requested to transfer the unit in the name of her mother. Though not obligated to transfer at this stage but being a customer centric organization, the Respondent took this as a special case and initiated the process of transferring the unit for which several formalities and verifications including taking approvals from different departments/ officers were required and the same were intimated by the Respondent vide Email dated 11.04.2019.

xi. Thereafter, several communications through mails were exchanged between the parties qua transfer of the unit in the name of the complainant and the respondent vide email dated 28.08.2020 transferred the booking and funds in the name of the complainant and further vide email dated 16.11.2020 confirmed the transfer of the Unit in the name of Mrs Meenu Yadav (Mother).

xii. It is submitted that the Complainant never had any intentions to pay the balance consideration and even after the transfer of the unit in the name of Mrs. Meenu Yadav, the Complainant vide

Email dated 17.03.2021 sought cancellation and refund without there being any default on the part of the Respondent. In flagrant violation of their obligations, the Complainants failed to make the payments and committed a default in terms of Clause 8 of the Agreement. It is submitted that as on 16.07.2021, there is an outstanding of Rs.7,43,920/- as per the Statement of Accounts(SOA) and Rs. 7,51,501/- as per the Statement of interest (SOI).

xiii. It may not be out of place to state here that non-payment by the Complainant resulted in considerable financial hardship on the Respondents who had to ensure the progress of the construction without any interim agreed contribution from the Complainant. It is submitted that there is no violation of any of the provisions of RERA and as such the present Complainant is liable to be dismissed. It is further submitted that the present complaint is wholly erroneous and misconceived. It is submitted that the present Complaint is devoid of any cause of action as admittedly the Respondents have raised the invoices as per the agreed timelines. It is submitted that the present Complaint is wholly erroneous, misconceived and is not maintainable in the eyes of the law.

xiv. 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. It is submitted that there is no misrepresentation or violations of any rules of RERA nor

that the Complainant has suffered any loss attributable to the Answering Respondent.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

7. 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

8. 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

9. 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)(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.

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.

10. 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. 2020-2021 (1) RCR (c) 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."

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 of the Authority

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

11. In the instant case, the builder buyer agreement for the subject unit was executed on 15.01.2016, and the complainant paid an amount of Rs.1,17,06,834/- against the sale consideration of Rs.1,17,23,453/-. As per the booking form the respondent promised that its low-density development with a density of less than 40 units per acre. The complainant was under the impression that the project was sold by M/s Godrej Properties as the name suggests that the said project is a Godrej Project. That the complainant while signing the application form for first time got to know that the project is being developed by M/s Oasis landmark LLP i.e., respondent no. 2 herein. She was being misled was informed that the respondent no. 2 is a company of the respondent no. 1 and has been created by the respondent no. 1 to make the project and the project will always be the project of the respondent no.1 and even the application form stated OBPL as a joint development partner. When the BBA was executed between the parties it was clearly mentioned that the project land area 9.359 acres further the name of the respondent no. 2 was missing.

12. The authority in present matter observes that, as per brochure at page 49 of the complaint Oasis Build Home Pvt. Ltd. is a joint venture partner with Godrej Properties. Furthermore, an application under section 4 of the Act, 2016 before the interim RERA i.e., The Haryana Real Estate Regulatory Authority, Panchkula for Godrej Icon and Godrej Oasis was also made by Oasis Landmarks LLP. Furthermore, the buyer's agreement dated 15.01.2016 was also being executed between R2 , R3 and the complainant. It is pertinent to note that the said BBA does not mention the name of respondent No. 1. Therefore, the authority in the present matter opines that since the complainant on one hand have a doubt regarding the misrepresentation by the respondents but signed the agreement mutually and never raised any query regarding the same therefore it can be said that the complainant knowingly ignored this fact and kept on making the payments as per the demands raised by the respondents.

13. The unit was initially allotted in the name of Ms. Neha Yadav who subsequently requested that the same may be transferred in the name of her mother Meenu Yadav vide email dated 05.03.2019. However, no official documentation regarding acceptance of this request apart from one email dated 11.10.2019 has been received. Subsequently, she came to know that there has been a gross irregularity in the project pertaining to representation of the total area of the project which was initially shown as 9.359 acres and later on reduced to approximately 6.5 acres and the complainant has also seeking refund on this aspect also. The respondent had further failed to disclose that in their submission for getting Environment clearances they have disclosed an increased number of dwelling units from 662 to 747 (by 13% approx.)

Increased number of dwelling units from 662 to 747 (by 13% approx.) on the total project lands of which the Godrej Icon Project and Godrej Oasis were a part. Thus, causing grave prejudice to the rights of the complainant along with the other allottee.

14. Further it was stated that as per builder buyer agreement, the respondent no. 2 has declared the project land as 9.359 acre. Also, it was mentioned that no part of the land is to be transferred to the Government and the respondent no. 2 has rights to market/ develop the entire project land and that there are no encumbrances on the project land. The said factum was also verified by the complainant and the other allottees by paying a visit to inspect the ongoing project development work. It is stated that the same is the situation in the Patwari's office wherein parcels of land which form part of the project land have been acquired way back in 2014, but till date are being included in the project land. It is further very disheartening that respondents are including lands which have been shown to be a part of the roads/ expressway as is being developed and is to be transferred to the Government. As per original demarcation plan dated 18.05.2013, the net land available for development is shown as only 11.05 acres for the combined Godrej Icon & Godrej Oasis Projects. Further the DTCP License - No. 85 of 2013 dated 14.10.2013, basis this demarcation plan and states at its Point 3 & 4 that the lands earmarked for public roads shall be handed over to the Government free of cost and shall not form a part of the project. Hence, knowing fully well that the respondents could never deliver the said land they still advertised and sold land not available for the project since its inception. That after further follow-ups from the other allottees, it was

learnt by the complainant that the respondents received sanction of the amended sanction plan in January 2018 and sought objections from the allottees only in May-June, 2018 i.e. after almost 4-5 months of having received the sanction plan. This is not only manifestly against the principles of natural justice but also against the provisions enshrined under the Act of 2016 which stipulates that any change sought to be done to the sanction plan has to be done only after getting prior approval from 2/3rd of the allottees in the project, whereas the respondents have gravely failed to do so while the Act of 2016 was already in effect and in contravention of its existing RERA registration. The complainant sought refund of the amount deposited vide email dated 17.03.2021 on the above ground.

15. On the other hand the respondent states that the unit has been transferred in the name of the complainant herein on 28.08.2020 upon the request of the erstwhile allottee i.e., complainant's daughter and the same was also confirmed vide email dated 16.11.2020. After following the due process of the law, DTCP granted approval regarding revision of the building plans on 03.10.2018. It is submitted that the building plans were revised after following the due process of the law applicable at the relevant time. The complainants failed to make the payments and committed a default in terms of clause 8 of the agreement. It is submitted that as on 16.07.2021, there is an outstanding of Rs.7,43,920/- as per the Statement of Accounts (SOA).

16. In the present complaint, the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in

accordance with the terms of agreement for sale or duly completed by the date specified therein.

17. As per clause 4.2 of the builder buyer agreement dated 15.01.2016 the due date of possession comes out to be 30.04.2020. Clause 4.2 of the buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

> *The Developer shall endeavor to complete the construction of the Apartment* ***within 48 months (for Iconic tower's apartments)/ 46 months (for other tower's apartments) from the date of issuance of Allotment Letter, along with a grace period of 6 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.*

18. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 48 months from date of issuance of allotment letter, along with a grace period of 6 months over. The period of 48 months ends on 30.04.2020 (Due date of possession is calculated from the date of allotment letter i.e., 30.10.2015). 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 6 months at this stage, accordingly the due date of possession comes out to be 30.04.2020.

19. The authority is of the view that the present matter is covered under section 18(1) of the Act of 2016 for the reasons stated below.

20. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be

expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

> *".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** 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***. It was observed:

> *"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or

unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as 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 the unit with interest at such rate as may be prescribed.

23. Also, the respondent was under an obligation to inform the allottee about the changes made in the building plan. Admittedly, there is nothing on record to corroborate that the respondent-builder had either intimated the allottee about the revision of building plan nor has sought the consent of the complainant-allottee for such revision in the building plan. The changes being unacceptable to the complainant/allottee, the complainant has approached the authority seeking refund of the entire amount paid by her as the respondent illegally, arbitrary and unilaterally changed the building plan. As per section 14 of the Act, the promoter is an obligation to take consent from the allottees if any changes are made out in the building plan. Section 14 of the Act is reproduced below for ready reference:

Section 14: Adherence to sanction plans and project specifications by the promoter.

(1).....

(2).....

(i).....

(ii) *Any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.*

Explanation: For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever

name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

24. In view of the above facts and circumstances, the authority is of the view that in such a situation where the promoter has failed to take consent of the complainant-allottee and hence the respondent has violated section 14 of the Act.

25. The authority hereby directs the promoters to return the entire amount received by it i.e., Rs. 1,17,06,834/- with interest at the rate of 10.75% (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 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F.II. Direct the respondents to pay compensation and litigation costs.

26. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021),*** has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of

obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f):

i. The respondents/promoters are directed to refund the entire amount of Rs. 1,17,06,834/- paid by the complainant along with prescribed rate of interest @ 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.

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.

28. Complaint stands disposed of.

29. File be consigned to registry.

Ashok Sangwan
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.08.2023