BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**3040 of 2020**
Order reserved on :	**11.02.2025**
Order pronounced on :	**18.03.2025**

Mrs. Shelly Choudhary
W/o Sh. Rajeev Kumar
R/o: - A-1, Patel Nagar Air Force, Jodhpur Residency Road, Jodhpur- 342011, Rajasthan. **Complainant**

Versus

1. **M/s Godrej Properties Limited**
Office at: Unit No. 5C, 5th Floor, Godrej One, Pirojshanagar, Vikhroli East, Mumbai- 400079
2. **M/s Oasis Landmarks LLP**
Office at: 3rd Floor, UM House, Plot No. 35P, Sector-44, Gurugram-122001.
3. **M/s Oasis Buildhome Private Limited**
Office at: 19, Maulana Azad Society, Parwana Road, Pitampura, New Delhi **Respondents**

CORAM:

Shri Arun Kumar	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**

APPEARANCE:

Shri Ashish Sardana (Authorized representative through GPA)	**Complainant**
Shri Saurabh Guaba (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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act

wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Godrej Icon", Sector 88A, 89A, Gurgaon
2.	Project area	13.759 acres
3.	Nature of the project	Group Housing Colony
4.	DTPC License no.	85 of 2013 dated 10.10.2013 Valid up to 09.10.2024
5.	Name of licensee	Oasis Buildhome Private Limited
6.	RERA Registered/not registered	Registered 53 of 2017 dated 17.08.2017 Valid up to 30.09.2019
7.	Unit no.	B-1001, 10th floor, Tower-B (Page no. 78 of complaint)
8.	Super area	1617 sq. ft. (Page no. 78 of complaint)
9.	Application form	19.04.2015 (Page no. 62 of complaint)
10.	Allotment letter	08.12.2015 (Page no. 69 of complaint)
11.	Buyer's agreement (annexed but not executed)	15.01.2016 (Page no. 153 of reply)
12.	Possession clause as per buyer agreement annexed but not executed	*4.2 The Developer shall endeavor to complete* ***the construction of the Apartment within 48 months (for Iconic tower's apartments)/ 48 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 months 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. (Page no. 159 of reply)
13.	Due date of possession	08.04.2020 (Note: - 46 months from date of issuance of allotment letter i.e., 08.12.2015 + 6 months grace period allowed being unqualified)
14.	Total sale consideration as per payment plan annexed with BBA at page no. 122 of complaint	Rs.1,16,83,028/-
15.	Amount paid by the complainant as per SOA dated 28.06.2017 at page no. 128 of complaint	Rs.98,01,900/-
16.	Legal notice for cancellation and refund the entire paid up amount sent by the complainant	11.02.2020 (Page no. 204 of complaint)
17.	Occupation certificate	29.03.2019 and 18.09.2020
18.	Notice for possession	31.10.2020 (Page no. 385 of reply)

B. Facts of the complaint

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

I. That the complainant was over email informed about the project and was emailed the project brochure of a luxury project named as ***'GODREJ ICON'*** at Sector 88A and 89A, Gurugram, Haryana by *North Park Technologies India Private Limited* namely a market agent of the respondents thereby marketing a commitment made by the respondents of huge discounts and a payment plan of The project plan appended with the project brochure was of 20:20:60, to the complainant, just to lure the unsuspecting complainant who is merely an innocent housewife as well as a first time homebuyer. The respondents in their own marketing material had made such lucrative promotional offers to the complainant as well as to the others allottees that lured to the complainant into purchasing the said residential unit in the

project of the respondents albeit not knowing that such amenities or promotional offers won't be seeing in light of the day.

II. That the amenities offered and other luxurious services as were committed by the respondents included but not limited to a Skywalk @ Rs.130 ft., star gazing platform, party deck, barbeque counter, reflexology court, Zen garden, a kilometer long jogging track and yoga and meditation area all at a height of 130 ft. 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"* along with 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 ~ 9.359 acres), as was committed to the complainants at the time of booking.

III. That the complainant mustered all her life savings and hard earned money and booked one dwelling unit bearing no. B1001, 2BHK + Study (Type C) in tower- B, on 10th floor, admeasuring 1617 sq. ft. super area in the respondent Icon project. The complainant accordingly, gave the cheque for the 'booking amount' amounting to Rs.5 Lacs unbeknownst to the complainant and her family members that the discount/offer that was promised for 'first 100 bookings only' was offered to 80% of bookings of units in the project in addition to the 5% commission to agent/brokers/ agent partner and other sops such as personal family trips to personnel at such entities on achieving certain targets which were all in violation of the Haryana Regulation of Property Dealers and Consultants Rules, 2009, that limited the aggregate commission at 1% of value of property. The booking was promised under 20:20:60, plan with 60% to be paid at possession as

per the commitment of the officials of the respondents 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 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 installments would be payable within six months of possession being offered.

IV. That on 20.07.2015, the complainant made the due payment of Rs.7,09,412/- *(payable within 60 days of booking)* through cheques. Thereafter, the complainant on 04.11.2015 made another payment of 10% of cost of property at 5 months of booking became due being an amount of Rs.12,32,486/-, till 20.11.2015, the complainant had already made a payment of 20% of the cost of the flat, without the BBA having been executed. This was done inspite of requests having made and categoric commitments given 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.

V. That the complainants, on 08.12.2015, after 8 months of having paid the booking amount, received an allotment letter wherein the total sale consideration was mentioned as Rs.1,16,83,028/-. The BSP of the apartment was Rs.97,00,383/- and the PLC was Rs.1,61,700/- and the respondents were charging an amount of Rs.3,75,000/- for car parking which is not only illegal but also usurious.

VI. That the buyer's agreement was executed between the parties on 15.01.2016, although many of the terms as agreed upon and represented/assured by respondents at the time of booking were changed without giving any intimation to the complainants. By this time, the

complainants have paid huge amounts being approximately Rs.24,41,900/- and were forced to continue with the project inspite of the various misrepresentations and blatant violations of the terms as agreed upon by the respondents.

VII. That as per the standard terms and conditions, the respondents had to handover the possession of the apartment within a period of 46 months. For clarity of records, the 46 months' time period expired in February, 2019 i.e., commencing from the date of payment of the booking amount on 19.04.2015.

VIII. The complainants 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 the complainants that in case they wish to retain their apartment they would have to pay the amounts as and when they are demanded otherwise they shall be burdened with interest @15%. It was at the nascent stage only that the complainant had realized that the respondents are merely trying to usurp the entire life savings of the complainant by misselling the project albeit not knowing what was in store for the complainant which was deciphered by the complainant at a later stage. Thereafter, the complainant resorted to asking for the company's policies regarding the withdrawal from the said project.

IX. That the email dated 04.08.2016, was sent only after a span of four months of raising of demand of 20% of the cost of property as per the schedule of payment was to be raised at the time of completion of super-structure which as per the respondents' own communication was to be paid in March, 2016 merely after 11 months of signing the application form and the said pre-termination notice was sent to the complainant in August, 2016. It is

further stated that there were numerous figures incorporated in the said notice which were incalculable in nature. It is further stated that the outstanding amount as per the statement of account was Rs.6,48,142/- and the total interest payable by the complainant was Rs.1,19,313/-. Further it was stated that the overdue amount was Rs.7,61,861/- and that surprisingly the complainant was finally called upon to pay a sum of Rs.7,67,455/- that too in a span of 15 days, which as per the initial understanding and communication with the respondents could not be arranged by the complainant in such a small span of time.

X. That the officials of the respondents at the time of taking of booking as well as at all times thereafter, had committed to the complainant that the project shall take a period of 46 months to complete and hence, the payment would be demanded in a phased manner over the said 46 months. That the respondents started demanding huge amounts from the inception contrary to their own commitments made to the complainant and till the signing of the BBA, the respondents had already taken 20% of the entire consideration as was to be paid.

XI. That within a period of 11 months from the date of booking, evidently the respondents had further demanded another 20% from the complainant. It is submitted that the same was to be charged at the time of completion of Super-Structure. 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. 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. She raised her objections and in fact wished to see the location and even went and saw the location. The complainant was further taken aback by what lay in front of them as

the tower in which their flat was booked was not at the stage of superstructure and that the respondents had raised such frivolous demands.

XII. That a brief encapsulation of the entire chain of events would be that the complainants booked in pre-launched offer in April, 2015, the construction did not start till August, 2015 and in March 2016, the entire superstructure consisting 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 malafide of the respondents.

XIII. That the respondents thereafter on 07.11.2016 within 8 months of having raised the invoice for payment towards the completion of superstructure demanded the payment for the next 40% being a sum of Rs.49,03,972/- which was to be made at the time when the finishing was completed i.e., when the brickwork and internal plaster work was completed in the entire building.

XIV. That to the further shock and amazement of the complainant, she informed by the other allottees that the respondents had unilaterally changed the sanctioned plan. They received a letter stating that there was a change in builder which was also done without intimating the complainants. The complainants thereafter kept on inquiring 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. 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 either forcing the complainants 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 or forcing the complainants to pay and thus enjoying their money well in advance. The complainants also found out that the respondents were demanding payment in clear abrogation and derogation of the terms of the Act of 2016.

XV. That the complainant till 27.06.2017, were constrained to make further payments with relation to the previous demands being raised by the respondents amounting to and had accumulatively paid a sum of Rs.98,01,900/- till present date which the respondents have also acknowledged on the statement of account provided by them to the complainant. The said statement of account provided by the respondents has paid an excess amount of Rs.7,886.71/- to the respondents.

XVI. That the complainant in July- August, 2018, was struck with an exigency with her family and that because of the said unavoidable circumstances, she requested the respondents to refund at least the principal amount at the earliest which was paid by the complainant rightly after the demands having been raised by the respondents. In response to the same, the respondents further didn't pay any heed to the said request of the complainant and the situation was left to hang and dry by the respondents, thereby putting the innocent and helpless complainant in a state of despair.

XVII. That the complainant also found out that the respondents had changed the sanction plan sometime in January, 2018 and had not even informed the complainant about the same, the same was intimated to the complainant vide their letter in May, 2018.

XVIII. That the respondents have made material changes to the project wherein they have reduced the size of the project, increased the number of dwelling

units apart from demanding payment in total violation of the terms of their RERA License, thereby not only being deficient in the customer service as was promised to be provided but also misseling the project and changing the livability in the project to the adversity of the complainants.

XIX. That the complainants along with other homebuyers filed certain RTI's with RERA and Director Town and Country Planning, Haryana (DTCP) to find out about the actual facts as to the actual status of the project. Through RTI filed by the other home-buyers before this Authority, which had granted the License to the respondents for the project titled as Godrej Icon and had sought documents as filed along with the application for grant of license. The following contradictions and inconsistencies emerged from the said procured documents:

- The respondents in the buyer's agreement as provided in December, 2015 had disclosed the fact that the project is being built on project land which measure 9.359 acres, whereas in the RERA declaration, they have disclosed that the project is being built on project land ad-measuring 6.459375 acres. This leads to reduction in the declared project land from 9.359 acres to 6.459375 acres (by 31% approx.) for Godrej Icon Project in contravention of buyer's agreement (the project lands under HRERA Registration 50 & 54 of 2017 are collectively Godrej Icon project lands). That the complainants, thereafter, got hands on the registration certificate of the project OASIS (Regd. No. 53 of 2017) dated 17.08.2017 issued by this Authority, from wherein it was learnt that evidently the request for the registration of the Project as was made by the respondents vide their application dated 28.07.2017 was made for 6.8 acres of land. It is stated that the change in project land size has nowhere been disclosed to either the complainants or any other allottees and the respondent have been mis-selling the project to hapless customers while leading them to believe that they shall be staying in a project built on larger lands and shall have more open areas than what is actually there.
- 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 low density of flats being less than 40 flats per

acre, thus more open areas for Godrej ICON, 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. Thus, causing grave prejudice to the rights of the complainants along with the other allottees.

XX. That the complainants, got to know that the respondents have made further changes and have in fact not only increased the number of flats but has also merged a license for play school in the group housing society license and thereafter, transferred the land of the group housing society to the play school, which thereby reduced the green area and the commercial areas so that they can benefit at the cost of the allottees. These unilateral changes done by the respondents and the willful concealment of the same has caused immense change in the project and has altered the livability of the project altogether and in fact the project is nowhere as was committed to be provided.

XXI. That after further follow-ups from the other allottees, it was learnt by the complainants 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. 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 75% 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 registration certificate. The respondents have nowhere in their submissions to DTCP or the environmental authorities disclosed that two separate and distinct projects are being developed but have shown that one project is being developed on 13.759 Acres.

XXII. That the complainant having failed to get any redressal of their grievances from the respondents lost all their faith in the commitments of the respondents, were constrained to send a legal notice by their legal counsel. Thereafter, a legal notice dated 11.02.2020 was sent on the complainant behalf to the respondents which was duly delivered.

XXIII. That the respondents are in total breach of all the terms and conditions that were committed or agreed in writing or verbally prior to or after the said booking by the complainants. The respondents have not only mentally harassed the complainants but by delaying the project and mis-selling the same, have even harassed the complainants purposely so that they frustrated into cancelling their booking and so that the respondents can illegally withhold their life savings on the pretext of cancellations and other charges although the same were never agreed upon. The respondents had taken 80% of the cost of property almost three years prior to when they would have been due as also portrayed in the construction updates, further the respondents had kept the said money on false promises of handing over possession. It is submitted that the respondents offered possession without receiving the occupancy certificate and the completion certificate, took the money and when the complainants found out that the property is incomplete, the respondents for almost a period of 1 year stopped responding to the complainants queries and in fact till date have not provided the complainants with the OC and CC.

XXIV. That it is a settled law where the complainants is entitled to either the residential unit so booked by them as was also committed to be delivered to them or in case the builder/respondents are unwilling/unable to provide the same then for the refund of the principal amount and interest, in such cases the compensation should necessarily have to be higher because the

person who had booked/purchased the flat has been deprived of the benefit of escalation.

C. **Relief sought by the complainant: -**

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

I. Direct the respondent to refund the entire principal amounts of the complainants along with monthly compounded interest @15% or as per the RERA guidelines at 10% base rate plus 2% as per the RERA Rules 2017.

II. Pass an award for a sum of Rs.49,00,500/- towards loss of appreciation @10% p.a. from May, 2015 till May, 2020.

III. Pass an award for a sum of Rs.25,00,000/- towards mental and physical harassment, mental agony and damages/penalty.

IV. Pass an award for a sum of Rs.2,00,000/- towards litigation charges.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. **Reply by the respondent**

6. The respondent has contested the complaint on the following grounds: -

i. By way of background, that the complainant booked an apartment with Oasis Landmark LLP in its project namely GODREJ ICON situated at Sector 88 A and 89 A, Gurgaon, Haryana vide an application form dated 19.04.2015. It is submitted that the total cost of the apartment was Rs.1,16,83,028/- (exclusive of taxes) wherein the complainant opted for a construction linked plan. It is further submitted that the tentative date of delivery was 46 + 6 months (Clause 16 of the Application form) from the date of allotment letter dated 08.12.2015 which comes out to be 08.04.2020. Pursuant to the said application, the complainant was allotted a unit no. B1001, on the 10th floor in tower-B vide an allotment letter dated 08.12.2015.

ii. That thereafter on 15.01.2016, an apartment buyer agreement was also executed between both the parties. The complainant opted for a construction

linked plan and the tentative date of delivery was 48 + 6 months (Clause 4.2 of the BBA Agreement) from the date of allotment letter dated 08.12.2015. Therefore the tentative date of possession comes out to be 08.06.2020.

iii. That as per clause 2.4 of the Agreement clearly stated that if the buyer fails to pay any instalment or part thereof of the balance consideration as per the schedule of payments set out in in Schedule VII, then the complainant shall be liable to pay instalments along with simple interest at the rate of 15% per annum on the outstanding from the due date till the date of actual payment. The application form dated 19.04.2015, the allotment letter dated 08.12.2015 (allotment letter) and apartment buyer agreement dated 15.01.2016 (Clause 2.5) clearly stipulated and defined earnest money to be 20% of the cost (Earnest Money) which was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the buyer. Further, as per clause 2.10 of the agreement clearly stipulated that in the event of non-payment of any installment by the buyer as per the schedule of payments set out in schedule vii of the agreement, the developer is within its right to reject the booing and treat the amounts paid towards part earnest money in view of the defaults committed by the complainants.

iv. It is further submitted that clause 5.4 of the agreement categorically stipulated that if the complainant fails to take the possession of the apartment, the same shall be construed as the complainant's default.

v. Despite completing the construction of the apartment along with the basic amenities and offering the possession within the promised timelines, the complainant has failed to clear it's outstanding and take possession of the apartment and is now arbitrarily seeking refund without there being any default on the part of the respondent.

vi. That Oasis Buildhome Private Limited ('OBPL') (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, village Harsaru of Gurugram. Thereafter vide a development agreement dated 22.09.2014, the development rights in the said 13.759 acres land was transferred by OBPL in favour of Oasis Landmarks LLP (Respondent No.2) ('Developer'). It is submitted that the Developer accordingly got zoning plan and building plans approved from the competent authority i.e. DTCP.

vii. 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, OBPL obtained additional license for additional land parcel admeasuring 0.925 acres from DTCP vide license no. 151 of 2014 dated 05.09.2014 and a second development agreement was executed on 23.05.2018. Thereafter, the DTCP granted in-principle approval for the revision of the building plan on 12.04.2018.

viii. 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:

- Instead of the Tower 4-5, only tower 5 was to be constructed;
- Tower 11 and 12 were discarded;
- 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.
- A new tower-4 will be constructed in parcel D, a convenient shopping-3, community building-3 is proposed for tower 5.

- Revisions were made in the EWS block. It is submitted that the changes were carried out 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.
- Thereafter a meeting was held on 17.07.2018 where the objections from the allottees were heard at length by DTCP. 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 changes were carried following the due process of the law applicable at the relevant time.

  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. Copy of the map detailing the area wise bifurcation of the project land for OASIS and ICON project land.

ix. It is submitted that thereafter the Developer also applied for a change of developer as per the policy dated 18.02.2015.

x. 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. That a meeting was held on 17.07.2018 where the objections from the allottees were heard at length by DTCP. Pursuant thereto, after following the due process of the law, DTCP granted approval regarding revision of the building plans.

xi. Thereafter, after following the due process of the law, DTCP granted approval regarding revision of the building plans on 03.10.2018. That the building plans were revised after following the due process of the law applicable at the relevant time.

xii. 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 is carried out 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.

xiii. That there is no reduction of the land for ICON neither the land that was meant for ICON has been used for any other project as wrongly contended by the complainant. 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 respondent had duly complied with all the applicable provisions and the changes were carried out after following the due process of the law. That the revision in the building plans is as per the environment norms and the respondent has duly taken the requisite approval for the same.

xiv. 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 and the occupancy certificate dated 18.09.2020.

xv. That the minor delay in the completion of the project was occasioned due to the force majeure arising out of the Covid-19 Pandemic. Thereafter, the respondent issued a possession intimation letter dated 30.10.2020. Even this Authority has considered the outbreak of COVID-19 as a force majeure event and has extended the completion date or revised completion date or extended completion date automatically by 6 months.

xvi. That immediately after completion of the apartment and receiving the OC, the respondent no. 2 issued a possession intimation letter dated 31.10.2020. However, it is the complainant who has failed to take the possession of the apartment despite the same being completed in all aspects. That the complainant has no intention of taking possession of the flat on account of fall in the market prices and is now raising frivolous issues in the instant complaint in order to seek refund without there being any default on the part of the respondent.

xvii. That the respondent upon completion of the respective milestone issued the invoices to the complainant. The abjectly failed to fulfill its obligations and there is a principal outstanding amount of Rs.24,78,292/- to get with the interest amount of Rs.21,86,639.87/- and maintenance charges amounting to Rs.114,025.68 as on 04.11.2022. That the respondent thereafter wrote several reminder letters requesting the complainant to clear her outstanding.

xviii. That the complainant without any allegation vide an email dated 30.07.2018 communicated that due to some of her "unavoidable circumstances towards the family" she wants to get a refund. The complainant violated its obligation under the apartment buyer agreement to make payments as per the demand raised after completion of construction milestones and defaulted in making payment. It is further submitted that the complainant was bound to make the payments according to the construction milestone mentioned in the payment schedule.

xix. That as per clause 2.10 of the agreement clearly stipulates that in the event of non-payment of any instalment by the complainants, the complainants shall be liable to pay interest on the unpaid amounts at the rate of 15% per annum computed from the due date till the date of actual payment. Owing to the continuous default on the part of the complainant, the respondent having no other option had to sent pre-termination letter as per the terms and conditions of the agreement. 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.

xx. That the respondents have not only lost the opportunity to sell the said flat to some other person, (at the time when complainant booked the flat) who

would have adhered with the terms of the contract and paid the entire sale consideration in time. That presently there is a downward revision in the market prices and the identical flat is now being sold at Rs.51,963 per sq. meters. instead of Rs.64,669 per sq. meters. and as such there is a loss of Rs.19,05,933/-(Rs.12,706/-*150/-sq. meters). That the complainant is now trying to shift the burden of losses on to the complainant by arbitrarily seeking the refund of the project.

xxi. That there is no violation of any of the provisions of the Act of 2016 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.

xxii. 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. That there is no misrepresentation or violations of any rules of 2017 nor that the complainant has suffered any loss attributable to the respondent. Therefore, this Authority after taking due cognizance of the preliminary submissions, which are taken in alternative and without prejudice to each other. That the preliminary submissions are stating clearly and unequivocally the grounds for dismissal of the instant complaint, may dismiss the present complaint forthwith with exemplary costs.

xxiii. Without prejudice to the aforesaid, respondent denies each and every allegation raised in the instant complaint unless specifically admitted hereinafter. Without prejudice to the generality of the aforesaid denial, the

respondent hereby seeks to submit a para-wise response to the averments made in the complaint.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by both the parties.

8. The respondent has filed an objection and the reply of the same and written submissions filed by both the parties along with the documents for kind consideration of the Authority, the same have been taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

9. 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

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the*

association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Observations of authority upon liability of respondent no. 1 and 3 or respondent no. 2 under section 18 of the Act, 2016.

13. On 09.05.2023, respondent no. 1 (M/s Godrej Properties Limited) filed an application for deletion for its name stating that the development and construction of the said project was to be carried out by respondent no. 2 & 3. Moreover, respondent no. 2 issued the allotment letter to the complainant(s) and also, all the payment receipts have been issued to the complainant(s) by respondent no. 2 only. Further, the buyer's agreement was executed between the complainants and the respondent no. 2&3, and the complainant(s) in their complaint failed to justify their claims against respondent no.1 specifically. Accordingly, respondent no. 1 should be deleted from the array of party not being the necessary party.

14. After considering the documents available on record, it is determined that the respondent no. 1 has not only advertised the said project but also all communications with the complainant(s) have been made by it and thus the respondent no.2 has acted as a promoter and falls under the definition of promoter under Section2(zk)(v) of the Act, 2016. The relevant portion of this section reads as under:-

"2. Definitions. — In this Act, unless the context otherwise requires —
(zk) "promoter" means, —

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
(ii) xxx
(iii) xxx
(iv)xxx
(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

15. As per aforesaid provisions of law, respondent no. 2 to 3 will be jointly and severally liable for the competition of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with respondent no. 2 and respondent no. 3 who have received the payments from the allottees. In view of the same, the contention/objection of respondent no. 1 stands rejected.

F.II The Authority has jurisdiction to decide the said complaints when the CWP is pending before the Hon'ble Punjab and Haryana High Court Chandigarh wherein the Authority is also a party?

16. The respondent raised preliminary objection that the complainant has not approached this forum with clean hands. The counsel for the respondent during proceeding dated 11.02.2025 stated that the complainants along with some of the allottees, subsequent to filing of present complaint, have also filed a civil writ petition before the Hon'ble Punjab & Haryana High Court bearing no. 17120 of 2020 titled as Mrs. Anita Sardana & Ors. V/s State of Haryana & Ors., where identical issues have been raised. It is a settled law that a litigant cannot be allowed to pursue two remedies seeking similar relief, on the same cause of action. It is prayed that present proceedings may be stayed till the disposal of writ petition.

17. The counsel for the complainant stated that his client along with some other allottees have filed a writ petition before the Hon'ble Punjab and Haryana High

Court mentioned above. In the aforesaid writ petition, the petitioners have prayed for issuance of mandamus or any other writ as the Hon'ble High Court may deem fit, seeking directions against respondent no. 1 (State of Haryana) and 2 (HARERA Gurugram) from issuing of occupation certificate and new registration to respondent no. 3 (M/s Godrej Properties). Further, all licensees and registrations granted to respondent no. 3 to 5 (M/s. Godrej Properties Ltd, M/s Oasis Landmarks LLP and M/s. Oasis Buildhome Pvt. Ltd.) with respect to project 'Godrej Icon' etc. be revoked or cancelled and further that during pendency of this petition, the issuance of any new certificate etc. be stayed. While through the present complaint, the complainants-allottees are seeking refund of the entire amount paid by them along with compensation. In view of the above, the authority is of the view that the cause of action as well as relief claimed in the Writ Petition and the present complaint are completely different and as far as relief of refund is concerned, the authority has complete jurisdiction to decide the present 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 complainants at later stage. Further, the counsel for the complainant states that no stay orders have been passed by the Hon'ble High Court and the plea of the counsel for the respondent is not applicable in this case and respondent is deliberately delaying the matter and request that the Authority may pronounce the order.

18. The Authority is of the view that any 'aggrieved person' may file a complaint with the authority or the adjudicating officer. Section 31 empowers an aggrieved person to file a complaint before the authority or the adjudicating officer on account of any violation or contravention of the provisions of the Act or rules and regulations.

19. Further, the Authority relies upon the Judgment dated 30.01.2025, passed by the Hon'ble Punjab and Haryana High Court Chandigarh in CWP bearing no. 24591 of 2024 in case titled as ***M/s Ramprastha Developers Private Limited and Ors. Vs State of Haryana and Ors***., and the relevant portion is reproduced for ready reference:-

> *"23. Consequently, if the supra imparted statutory definitions, to the supra statutory words, are read alongwith the endowment of a statutory privilege vis-a-vis an aggrieved, from any violations, as become stated in Section 31 supra. As such when thereby any aggrieved, thus becomes bestowed with the right, to in the event of any promoter, allottee or real estate agent, as the case may be rather making violations vis-à-vis any of the statutory provisions. Resultantly, when the making of such violations by supra vis-à-vis, thus any of the statutory provisions as occur in the RERA Act or qua any of the rules as become formulated thereunder, when thus confers a right in the home buyer(s) to agitate his grievance before the RERA Authority."*

20. In the present matter, the allottees have approached the Authority under the statutory provisions of The Real Estate (Regulation and Development) Act, 2016 for relief of refund, while in the matter pending before the Hon'ble High Court, the relief pertains to grant of various approvals to the respondents by the respective competent authorities. The relief sought before the Authority is distinct and fully covered under the provisions of the Act, 2016.

21. In view of the above, there is no merit in the plea raised by the respondent seeking stay of the present complaint till the disposal of writ petition and the preliminary objection raised by the respondent w.r.t. maintainability of complaint before the Authority.

G. **Findings on the relief sought by the complainant(s).**

G.I Direct the respondent to refund the entire principal amounts of the complainants along with monthly compounded interest @15% or as per the RERA guidelines at 10% base rate plus 2% as per the RERA Rules 2017.

22. That the present complaint was disposed off vide order date 06.10.2021, *with the direction to the respondent "Thus, the complaint in hands, is thus allowed. Respondents (other than respondent no. 1) are directed to refund amount received from*

the complainant till now i.e., Rs.98,01,900/- within 90 days from today, along with interest @ 9.30% p.a. from the date of receipts till realization of amount. Said respondents are further burdened with the cost of Rs.1,00,000/- to be paid to the complainant". Aggrieved with the same, the order was challenged by the respondent no. 2 and 3 before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 17.10.2022, vide which the order dated 06.10.2021 passed by the Adjudicating Officer has been set aside being beyond jurisdiction and the matter was remanded back to the authority for fresh trial/decision in accordance with law. So, in pursuant to those direction, both the parties put in appearance before the Authority. Therefore, the complaint is being deal with the Authority, the complainant has simply prayed for directions for refund of the amount paid against the subject unit.

23. In brief, the case of the complainant is that the respondent in its brochure specifically mentioned that the project namely, "Godrej Icon" is being developed by Godrej Properties Ltd. Under this impression as also the name suggests, that the said project is a Godrej Project, the complainants invested their money in the said project. It is only upon signing the application form, they got to know that the project is being developed by M/s Oasis landmark LLP i.e., respondent no. 1 hereinafter. On 19.04.2015, after going through brochure, she booked a residential unit bearing no. B-1001, 10th floor, in tower –B, in the said project. She initially paid an amount of Rs.5,00,000/- as booking amount and further made payment of Rs.7,09,412/- on 20.07.2015. Thereafter, respondent no. 1 issued an allotment letter dated 08.12.2015 to the complainants, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,16,83,028/-. The buyer's agreement was executed between the parties on 15.01.2016 and as per clause E of the said BBA, the said project was to be developed on project land admeasuring 9.359 acres. As per clause 4.2 of the BBA,

the respondent agreed that construction shall be completed within a period of 46 months, from the date of issuance of allotment letter along with grace period of six months. It is also alleged that the respondent has raised every demand prematurely in an arbitrary manner which is in derogation with the payment plan agreed between the parties in the application form and the BBA.

24. Further, as per brochure the respondent advertised the project as low-density development and specifically mentioned that the density shall be less than 40 units per acre. The respondents have unilaterally changed the sanctioned plan sometime in May-June 2018 without informing the complainants. It is also alleged that as per BBA, the project was to be constructed on 9.359 acres of land but actually the land is 6.459375 acres i.e. 31% less. Even the number of units were increased from 358 units to 662 units and also the towers have increased from 9 to 13 without informing the complainants. All these facts are mentioned in writ petition before the High Court. It is urged by counsel for complainants that their client is not insisting on any of the plea raised before High Court. The complainants have approached this Authority seeking refund of the entire amount paid by the complainants as they wish to withdraw from the project.

25. The unit in question was allotted in his favour by the respondent/promoter on 08.12.2015 vide provisional allotment letter. Thereafter, the buyer's agreement executed between the parties on 15.01.2016. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 15.01.2016, the possession of the booked unit was to be delivered by 08.04.2020. The occupation certificate for the tower/block in question was obtained on 29.03.2019. The complainant has surrender her unit through email dated 30.07.2018 and thereafter, send a legal notice dated 11.02.2020, seeking refund of the paid-up amount with interest on grounds reiterated in the present complaint.

26. The Authority observes that as per brochure at page 43 to 61 (annexure – 1) of the complaint, Oasis Build Home Pvt. Ltd. is a joint venture partner with Godrej Properties. By virtue of the said brochure, the project was being marketed in the name of Godrej Properties and it has the logo of Godrej Properties thus, luring the complainants to book the property. It is also pertinent to mention here that logo of Godrej Properties also appears on the first page of the Buyer's agreement. By mentioning the name and logo of Godrej Properties on the brochure, BBA & the statement of account (annexure-5, at page 126 of complaint) and the name of Godrej in the name of the project, the respondents have tried to make an impression upon the public at large that the said project is being marketed and developed by Godrej Properties. Further, it is of grave importance that the respondent in its brochure specifically mentioned the respondent has advertised the project as low-density development and specifically mentioned that the density shall be less than 40 units per acre (356 units in 9.1 Acre). Not only this, the Godrej Properties have also issued a press release on 21.05.2015 (annexure-17, page 97 of the rejoinder filed by the complainant) stating that the "***Godrej Properties sells entire launched inventory at Godrej Icon in Gurgaon***" and the same also states for further information please contact: Mr. Ajay Pawar, Sr., General Manager (Corporate Communications), Godrej Properties Limited. Through aforesaid false statements, the respondents influenced the allottees decision to purchase a unit in the aforesaid project.

27. Here, the Authority refer to the orders of the Hon'ble Apex Court in the case of ***Newtech Promoters and Developers Private Limited Vs State of U.P and Ors.*** wherein it has been held as under:-

> *"53 That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee*

and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

28. Accordingly, the Authority observes that the said representation of marketing the project by R2 in the brochure, BBA, email dated 17.04.2015 and press release amounts to mis-representation on part of respondents. Since, in the present matter, the complainants are seeking refund being affected by such incorrect, false statement contained in the advertisement or brochure, therefore the complainants are entitled for full refund along with interest under proviso to section 12 of the Act, 2016 at such rate as may be prescribed. Section 12 of the Act, 2016 is reproduced as under for ready reference:

> ***"12. Obligations of promoter regarding veracity of the advertisement or prospectus: -***
> *Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*
> *Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be,* ***intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed*** *and the compensation in the manner provided under this Act."*

29. It is further revealed that the building plans of the project of the allottees were got revised by the respondents on 03.10.2018, after the coming into operation of Act, 2016. The Authority is of the view that the respondent as violated the

provisions of Section 14(2)(ii) of the Act, 2016 which prohibits alterations/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. There is nothing on record to corroborate that the respondent/promoter sought the consent of the complainant/allottee for such revision in the building plan.

30. In view of the submissions made by the parties and fact on record as well as arguments of the respective parties, the Authority holds the respondents responsible for violations under Sections 12 and 14 (2)(ii) of the Act, 2016 and hereby directs the respondents-promoters to return the entire amount received by it with interest at the rate of 11.10% (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 realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Pass an award for a sum of Rs.49,00,500/- towards loss of appreciation @10% p.a. from May, 2015 till May, 2020.

G.III Pass an award for a sum of Rs.25,00,000/- towards mental and physical harassment, mental agony and damages/penalty.

G.IV Pass an award for a sum of Rs.2,00,000/- towards litigation charges.

31. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.*** **(supra),** has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

H. Directions of the Authority

32. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

    i. The respondents are directed to refund the paid-up amount of Rs.98,01,900/- paid by the complainant along with prescribed rate of interest @ 11.10% 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.

    iii. The respondent/promoter is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee/complainant.

33. Complaint as well as applications, if any, stand disposed off accordingly.

34. Files be consigned to the registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 18.03.2025