

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. : 1707 of 2019
Order reserved on : 11.02.2025
Order pronounced on : 18.03.2025

Mrs. Vishkakha Bisht
W/o Sh. Chandu Kumar
R/o: - House No. 935, Sector-3, Rohtak Haryana.

Complainant**Versus**

Oasis Landmarks LLP
C/o M/s Godrej Properties Limited
Regd. office at: 3rd Floor, UM House, Plot No. 35P,
Sector-44, Gurugram-122002.
Also at: Godrej Bhavan, 4th Floor, 4A Home Street
Fort, Mumbai- 400001

Respondent**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Ashish Sardana (Authorized representative
through GPA)
Shri Saurabh Guaba (Advocate)

Complainant
Respondent

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" Sectors- 88A & 89A, Gurugram
2.	Project area	9.359 acres
3.	Nature of project	Group housing colony
4.	RERA registered/not registered	Registered vide no. 54 of 2017 dated 17.08.2017
	Valid up to	30.04.2020
5.	DTPC License no.	85 of 2013 dated 10.10.2013
		151 of 2014 dated 05.09.2014
	License valid up to	09.10.2024
	Licensed area	13.76 acres
		0.925 acres
	Name of licensee	Oasis Buildhome Pvt. Ltd.
6.	Unit no.	D-0503, 5 th floor, tower- D [Page 33 of complaint]
7.	Unit measuring	1779 sq. ft. (super area) 1257 sq. ft. (carpet area) [Page 33 of complaint]
8.	Allotment letter issued in favour of the complainant by respondent	28.10.2015 [Page 33 of complaint]
9.	Date of execution of buyer's agreement between the complainant and the respondent	11.12.2015 [Page 38 of complaint]
10.	Possession clause	4.2 <i>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</i>

		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. [Page 54 of complaint]
11.	Due date of possession	28.02.2020 [Note: - 46 months from date of issuance of allotment letter i.e., 28.10.2015 + 6 months grace period]
12.	Total sale consideration	Rs.1,37,27,436/- [As per BBA on page 86 of complaint]
13.	Total amount paid by the complainants	Rs.57,71,105/- [As per SOA dated 01.07.2021 at page 303 of reply]
14.	Offer of possession	Not offered
15.	Occupation certificate	29.03.2019 [Page 325 of reply]
16.	Surrender/withdrawal request made by the allottee through email	04.08.2017 [Page 150 of complaint]
17.	Legal notice for cancellation and refund the entire paid up amount sent by the complainant	08.03.2019 [Page 151 of complaint]

B. Facts of the complaint

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

- I. That the complainant was first mailed the project brochure and a commitment of huge discounts and payment plan of 20:20:60:20 were made, just to lure the unsuspecting complainant who is an innocent housewife. She mustered all her life savings and booked a 3bhk unit bearing unit no. D0503 in the respondent's ICON Project. The complainant accordingly, gave the cheque with the booking amount of Rs.5 lakh unbeknownst to the complainant that the discount (or more) that was promised for 'first 100

bookings only' was offered to 80% of bookings of unit in the project in addition to the 5% commission to agents/brokers/channel partners and other sops such as personal family trips to personnel at such entities on achieving certain targets in violation of the Haryana regulation of property dealers and consultants Rules, 2009, that limited the aggregate commissions at 1% of value of property.

- II. That the booking was under 20:20:60 plan with 60% to be paid at possession as per the commitment of the officials of the respondent company. Post the signing of the application for it was informed to the complainant that the booking would be under 20:20:40:20, which was not acceptable to the complainant and she after lots of requests was able to get it changed to 10:10:20:40:20. The same was reflected in the application form as well as in the builder buyer agreement.
- III. That the complainant has made the due payment of Rs.9,34,872.60/- (payable within 60 days of booking) through cheques per statement of account. Further payment of 10% of cost of property at 5 months of booking became due being an amount of Rs.14,42,135.60/-.
- IV. That the complainant received an allotment letter wherein the total sale consideration was mentioned as Rs.1,37,27,436/-, wherein it was categorically mentioned that the builder buyer's agreement (BBA) has to be signed within 45 days and in case it is not signed then the same shall entail cancellation. That the basic sale price of the apartment was Rs.1,06,72,221/- and the PLC was Rs.8,89,500/- and the respondent were charging an amount of Rs.6,25,000/- for car parking which is not only illegal but also usurious.
- V. That the complainant signed and executed the builder buyer's agreement with the respondent wherein the project land was clearly mentioned as

9.359 Acres. The buyer's agreement also clearly stipulated that the Haryana Apartment Owners act shall be applicable to the agreement and the common areas shall be the ones as stated in the apartment owners Act. The construction shall be completed within a period of 46 months with a grace period of 6 months thereafter. It was further in para 6.22 written by the respondent that they shall enter into an agreement/shall execute necessary documents to help the complainant obtain loan from a Bank or a Financial Institution.

- VI. That the complainant received a demand for 20% of the amount as is to be paid at the time of completion of the super structure. It is submitted that although the complainant raised a query as to when the project has just been launched how could the super structure be completed, the respondent threatened the complainant and stated 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 @ 18%. The complainant having no other option paid the amount of Rs.28,89,229.20/- as demanded. The customer executives thereafter committed that now the next payment shall be due after about 1-1.5 years from now and they shall be given ample time to clear the same.
- VII. That the respondent thereafter within 4 months of having received the payment towards the completion of super structure 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 complainant being taken aback requested the respondent that they had committed that the said payment was to be made very near to when the possession would be offered and is the respondent

company in a position to offer possession. The respondent, responded by stating that they shall hand over the possession by the end of the next financial year i.e. by February-March 2018. The complainant categorically stated that she would be needing time till December 2017 to make the entire payment. The respondent stated that they shall be willing to give extra time, however not till December 2017, it was further communicated that the respondent company shall not levy any interest and the complainant should make the payment at the earliest.

- VIII. That the complainant kept on requesting for time and stating that she is arranging the funds. The complainant on 01.01.2017 wrote a mail wherein she requested the respondent to add the name of her husband in the booking so that she can take a loan in her husband's name to pay the installment as was due. The harassment continued thereafter as the complainant kept on requesting for the documents to be executed for name addition; however in spite of repeated requests the documents were received by the complainant after almost 3 months of having placed the request. The said states of affairs are such that the respondent company told to the complainant to send the documents multiple times as well as kept on increasing the number of formalities. The complainant kept on requesting the respondent to add the name of her husband so she can take the loan and pay the instalment.
- IX. That the complainant time and again in the month of June, 2017 requested the respondent company to add the name of her husband so that she could get the loan and pay the instalment. It was also apprised to the respondent time and again that the GST regime is going to be implemented and the already high cost of flat will get inflated which will cause unnecessary loss to the complainant. However the respondent paid no heed to the requests of the

complainant. Even in July 2017 wrote several mails requesting the respondent company to add the name of her husband as all the documentation as required by it had been completed, in spite of the requests, the respondent company failed to add the name of her husband. She had even got a pre-sanction from the bank and provided the tripartite agreement which was to be signed with the bank, and the respondent company, however asked the complainant to get so many changes made, which were not acceptable to the Bank. That the BBA had clearly stipulated that the respondent company would help with the execution of documents and would execute any and all necessary documents to enable the complainants to avail the loan facility.

- X. That the complainant's requests had been falling on deaf ears when she finally lost her patience and she sent a mail on 04.08.2017 requesting the respondent company to kindly cancel her allotment and refund her money to her. That the complainant's husband had got grievously ill and thus she was in need of money and was already harassed enough.
- XI. That the complainant wrote many mails wherein she requested the respondent to refund her money and even permitted them to forfeit 10% of the BSP amount or Rs.10 Lakhs from the amount of Rs.57,88,368.40/- already deposited by her and to refund the balance amount. However the greedy of respondent company started blackmailing to the complainant that they shall levy heavy cancellation charges and shall cancel an amount in excess of Rs.45 Lakhs and the balance money shall be refunded once the flat is sold. The respondent company neither cancelled the flat nor refunded the money to the Complainant, in spite of multiple requests and personal visits and in spite of the fact that the complainant kept on informing the

respondent that her husband, the sole earning member is grievously ill and she needs the money.

- XII. That the complainant having failed to get any redressal of her grievances from the respondent was constrained to her counsel. A legal notice was sent on the complainant's behalf to the respondent her advocate.
- XIII. That the complainant thereafter got in touch with other buyers and it was apprised to her 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, and questioned 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 so that they could benefit from her withdrawal and illegally usurp her money in the name of forfeiture, although they were not entitled for the same. The complainant thereafter also found out from RERA documents that the project which as per the BBA is 9.359 Acres is actually only 6.459375 acres, i.e. 31% less land. That the complainant thereafter also found out that the number of units/flats in the project had been increased from 358 to 662, and the number of towers had been increased from 9 towers to 13 towers, thereby making material alterations and adversely affecting the rights of the complainant on the project.
- XIV. That the complainant also found out that the respondent had changed the sanction plan sometime in May-June 2018 and had not even informed the complainant about the same. The letter of the respondent stating the change in sanction plan.
- XV. That the complainant also found out that the respondent company was demanding payment in clear violation of the RERA terms of license. The

complainant having failed to get redressal to their grievance having no other option being a housewife is constrained to initiate legal proceedings against the respondent to get her legally entitled money which is her life savings.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the entire principal amount of the complainant along with monthly compounded interest @15% or as per the RERA guidelines at 10% base rate plus 2% as per the RERA Rules 2017.
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. 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 14.05.2015. The total cost of the apartment was Rs.1,37,27,436/- wherein the complainant opted for a construction linked plan. It is further submitted that the tentative date of delivery was 46 + 6 months from the date of allotment letter which comes out to be 28.02.2020.
 - ii. That the payment plan that was duly agreed and negotiated between the parties was clearly enumerated in the application form. In pursuant to the said application, the complainant was allotted an apartment bearing no. 0503 on 5th floor in Tower D vide an allotment letter dated 28.10.2015. Thereafter on 11.12.2015, an apartment buyer's agreement was also executed between both the parties. The application form dated 14.05.2015, the allotment letter dated 28.10.2015, 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.

- iii. That as per clause 2.10 of the buyer's 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 booking and treat the amounts paid towards part earnest money in view of the defaults committed by the complainant.
- iv. That the Oasis Build Home Pvt. Ltd. initially obtained licence 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 respondent no. 3 in favour of respondent no. 2 ('developer'). That the developer accordingly got zoning plan and building plans approved from the competent authority i.e., DTCP. 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.
- v. Further, in the meantime, respondent no. 3 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. 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.

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.

- vi. 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. That the 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.
- vii. 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 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. 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.

- viii. 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. The revision in the building plans as per the environment norms and the respondents have duly taken the requisite approval for the same.
- ix. It is reiterated that the respondents had duly complied with all the applicable provisions and the changes were carried out following the due process of the law. Please note that initially the company applied RERA registration in phases and obtained the following certificates.
- RERA registration No.53 of 2017 for phase Oasis.
 - RERA registration no.50 of 2017 for phase ICON.
 - RERA registration no.54 of 2017 for phase ICONIC (part of Icon).
- x. That upon promulgation of the Real Estate Regulation Act, 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 in 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.

- xi. That the respondent company has taken steps for the rectification/re-registration of the phases with the correct phasing with concerned RERA Authority letter dated 07.07.2020 filed by the respondent no. 1 before this Authority, seeking correction in the registration certificate. That the company has taken steps for the rectification/re-registration of the project with concerned RERA authority.
- xii. That the invoice letters dated 03.07.2015, 23.09.2015, 03.03.2016 and 01.08.2016 were raised by the respondent. The respondent carried out the construction of the project at a considerable speed and achieved the initial construction milestones way before the due date. In pursuant to which invoice dated 01.08.2019 was raised on completion of the construction Milestone. The respondent has time and again sent all the construction updates to the complainant. The respondent is duly constructing the project in a phased manner as per the agreed terms and conditions of the agreement.
- xiii. That even this 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. It is pertinent to mention that by the bare perusal of the facts, it is evident that the complainant has no intention of making the payment as assurance made by the complainant nor the complainant is interested in taking possession of the flat on account of fall in the market prices.
- xiv. That the respondent raised demands strictly as per the payment plan agreed between the parties and only upon the completion of the agreed milestone. Since the construction was progressing at great pace, the complainant communicated its inability to arrange funds as per the agreed

payment milestones. Further, the admitted vide Email (12.08.2016) written by the complainant would reveal that she admittedly was unable to arrange funds as per the pace of the scheduled payment milestones. The respondent also offered an interest free extension to the complaint vide an Email dated 16.08.2016. The respondent has raised all the demands as per the schedule agreed on the application form and the buyer's agreement.

- xv. That on the other hand, the complainant abjectly failed to fulfill its own obligation and failed to make the timely payments thereby causing tremendous loss to the respondent. She has violated its obligation under the apartment buyer's agreement to make payments as per the demand raised after completion of construction milestones and defaulted in making payment of invoice of sum Rs.57,88,368/- as per statement of accounts dated 01.07.2021 and Rs.30,17,410/- as per statement of interest.
- xvi. That since the complainant failed to make timely payments, the respondent was constrained to send reminder letters. The complainant who caused considerable delay in completing the formality for changing the name and the complainant is now wrongly accusing the respondent for such delay. That the complainant requested for addition of her spouse name as co-allottee vide e-mail dated 01.01.2017. The respondent on 02.01.2017 shared the document required for the said purpose. Thereafter, she failed to provide the documents and vide email 08.03.2017 requested more time to provide the said documents. The respondent time again requested the complainant to submit the original documents however she kept on delaying such documents which can be seen from Pg. 118 of the complaint. The said documents were received by the respondent on 10.04.2017 and on 12.04.2017 the addition of name formality was completed.



- xvii. That the complainant committed defaults and violated the agreed terms and conditions of the agreement. It is further submitted that the complainant was bound to make the payments according to the construction milestone mentioned in the payment schedule. It is submitted that vide email dated 18.03.2016 the respondent intimidated the complainant that the milestone "on completion of Internal Plasterwork" and shall be accomplished around the third week of July 2016. It is submitted that the respondent after completing the finishing (Brick & Plaster) of Tower D raised a demand of Rs.57,61,776/-.
- xviii. That vide email dated 01.01.2017 the complainant requested the respondent to add the name of complainant's spouse as co-owner of the unit to facilitate the complainant to take loan from the bank as the complainant is not able to make the payment as demanded after completion of finishing (Brick and Plaster work). It is further submitted that the respondent vide email dated 04.01.2017 while fulfilling his obligation to assist the complainant to procure loan from the bank accepted the request. The respondent further requested the complainant to return the previously executed documents between the complainant and respondent and execute a fresh set of documents.
- xix. That 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. 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. It is

submitted 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. metrs. instead of Rs.64,680/- per sq. metrs. and as such there is a loss of Rs.20,98,205/- (Rs.12,717*165 sq. metrs.). It is submitted that the complainant is now trying to shift the burden of losses on to the complainant by arbitrarily seeking the refund of the project.

xx. 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 2017 nor that the complainant has suffered any loss attributable to the respondent.

xxi. 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.

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 the parties.
8. The respondent has filed an objection and the reply of the same and written submissions 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 reliefs 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. Finding on the objection raised by the respondent.

- F.I The respondent raised an objection with regard to dismissal of complaint when the CWP is pending before the Hon'ble Punjab and Haryana High Court Chandigarh wherein the Authority is also a party?**

13. The respondent raised preliminary objection that the complainant has not approached this forum with clean hands. The counsel for the respondent during proceeding dated 17.10.2023 stated that the complainant along with some of the consumer, 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.
14. During proceeding dated 17.10.2023, the said objection was rejected by the Authority as the complainant has filed the writ petition and consumer complaint for seeking different relief as is sought in the present complaint. As far as relief of compensation is concerned, 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. Thus, the present complaint is not barred by the principle of res sub judice and is maintainable. Thus, the application filed by the respondent seeking dismissal of complaint stands also rejected.
- G. Findings on the relief sought by the complainant.**
- G.1 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.**
15. That the present complaint was disposed off vide order date 13.09.2021, with the direction to the respondent "As stated earlier, learned counsel for complainant submitted categorically that his client simply wants withdrawal from the project and refund of her amount, in view of said notification. The complaint, in hands, is thus allowed.

Respondent is directed to refund amount paid by complainant till now. The same may deduct up to 10% of total sale consideration, according to notification mentioned above. As respondent failed to adhere to the directions of HARERA, Gurugram, the same is directed to pay interest on said amount, @ 9.50% p.a. from the date of said notification i.e., 05.12.2018, till its realization of amount. The respondent is also burdened with the cost of litigation of Rs.50,000/- to be paid to the complainant". Aggrieved with the same, the order was challenged by the respondent no. 1 before the Haryana Real Estate Appellate Tribunal, Chandigarh and who vide order dated 19.09.2022, vide which the order dated 13.09.2021 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.

16. 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 hereinafter. On 01.05.2015, after going through brochure, she booked a residential unit bearing no. D0503 in the said project. She initially paid an amount of Rs.5,00,000/- as booking amount and further made payment of Rs.9,34,872.60/- on 28.07.2015. Thereafter, respondent issued an allotment letter dated 28.10.2015 to the complainant, wherein the respondent mentioned

total sale consideration of booked unit as Rs.1,37,27,436/-. The buyer's agreement was executed between the parties on 11.12.2015 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.

17. Further, as per the mail dated 17.04.2015 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 complainant has approached this Authority seeking refund of the entire amount paid by the complainants as they wish to withdraw from the project.
18. The unit in question was allotted in her favour by the respondent/promoter on 28.10.2015 vide provisional allotment letter. Thereafter, the buyer's agreement executed between the parties on 11.12.2015. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 11.12.2015, the possession

of the booked unit was to be delivered by 28.02.2020. The occupation certificate for the tower/block in question was obtained on 29.03.2019. The complainant has surrendered her unit through email dated 04.08.2017 thereafter, through legal notice dated 08.03.2019, seeking refund of the paid-up amount with interest on grounds reiterated in the present complaint.

19. The Authority observes that the project was being marketed in the name of Godrej Properties and it has the logo of Godrej Properties thus, luring the complainant 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 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 through email dated 17.04.2015, 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 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.
20. 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."

21. Accordingly, the Authority observes that the said representation of marketing the project by Godrej properties 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 complainant is seeking refund being affected by such incorrect, false statement contained in the advertisement or brochure, therefore the complainant is 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."*

22. 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.
23. 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 respondent 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*.

H. Directions of the Authority

24. 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):
- The respondent is directed to refund the paid-up amount of Rs.57,71,105/- 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.

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

26. Files be consigned to the registry.

(Ashok Sangwan)
Member

V-I - 3
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.03.2025

HARERA
GURUGRAM