BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1509 of 2022
Date of order: 18.02.2025

1. Mrs. Namita Garg
2. Mr. Anshul Gupta

Both R/o: - E-1102, Purva Seasons, Kaggadaspura Main Road, C.V., Raman Nagar, BangLore, Karnataka- 560093. **Complainants**

Versus

1. **M/s Oasis Landmarks LLP**

Office at: Unit no. 5C, 5th Floor, Godrej One, Pirojshanagar, Vikhroli East, Mumbai- 400079

2. **M/s Godrej Properties Limited**

Office at: 3rd Floor, Tower-B, UM House, Plot No. 35, Sector-44, Gurugram-122002.

3. **M/s Oasis Buildhome Private Limited**

Office at: 6, Jwala Heri Market, Near MDI Market, Paschim Vihar, New Delhi- 110063 **Respondents**

CORAM:

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

APPEARANCE:

Shri Rohit Oberoi (Advocate) **Complainants**
Shri Saurabh Guaba (Advocate) **Respondents**

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees 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 complainants, 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	04.09.2024
	Licensed area	13.76 acres	0.925 acres
	Name of licensee	Oasis Buildhome Pvt. Ltd.	Oasis Buildhome Pvt. Ltd.
6.	Unit no.	D0802, 8th floor, Tower-D (Page no. 126 of complaint)	
7.	Unit measuring	1630 sq. ft. (super area) 1151 sq. ft. (carpet area) [Page no. 126 of the complaint]	
8.	Allotment letter issued in favour of the complainants by R1	16.11.2015 [Page no. 115 of complaint]	
9.	Date of execution of buyer's agreement between the complainants and the respondent no. 1 & 3	15.12.2015 (Page no. 121 of the complaint)	
10.	Possession clause	**4.2** The Developer shall endeavor to complete the construction of ***the Apartment within 48 months (for Iconic tower's apartments)***/ 46 months (for other tower's apartments) ***from the date of issuance of Allotment Letter, along with a grace period of 6 months over and*** above this 48-month period (Tentative	

		Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment. (Page no. 137 of the complaint)
11.	Due date of possession	16.03.2020 (Note: - 46 months from date of issuance of allotment letter i.e., 16.11.2015 + 6 months grace period)
12.	Total sale consideration	Rs.1,18,10,670/- (As per BBA on page no. 167 of complaint)
13.	Total amount paid by the complainants	Rs.99,04,297/- (As per SOA dated 11.05.2021 at page no. 180 of the complaint)
14.	Occupation certificate	18.09.2020 and 29.03.2019 (Page no. 274 of reply)
15.	Pre- termination letter	25.05.2021 (Page no. 304 of reply)
16.	Termination letter	26.08.2021 (Page no. 98 of reply)
17.	Legal notice for cancellation sent by the complainants	03.12.2021 (Page no. 249 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

I. That the instant complaint has been signed, verified and instituted by the general power of Attorney holder of the complainants, who is vide general power of attorney dated 16.11.2021 is duly authorized to institute the present complaint and is also well aware of the facts and circumstances of the case. The complainants had invested their entire life savings in order to purchase the dream home for themselves and their family so as to enable them to stay in the premises as promised.

II. That on 26.05.2015, the complainants came to know about the project titled as ***'GODREJ ICON'*** at Sector 88A and 89A, Gurugram, Haryana. The project plan appended with the project brochure was being marketed with the name

of Godrej Properties; the officials propounding themselves as employees of Godrej Properties, showed the complainants the brochure also has the Logo of Godrej Properties, thus, luring the complainants to book the property offering huge discounts and a payment plan of 20:20:60, Godrej Properties lured the complainants to grab the promotional offers into purchasing of the properties.

III. That the amenities offered and other luxurious services as were committed by the respondents included but not limited to a Skywalk @ 130 feet, star gazing platform, party deck, barbeque counter, reflexology court, Zen garden, a kilometer long jogging track and yoga and meditation area all at a height of 130 feet also including a 32 storey Iconic Tower with Helipad. 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 of the most prominent an entry was low density development with a density of less than 40 units/acre (356 units in ~ 9.359 acres), as was committed at the time of booking.

IV. That the complainants booked a 2BHK + study (Type A) unit measuring 151 sq. mtrs. unit bearing no. ICOND0802 in Icon project by paying an amount of Rs.5 Lacks as booking amount on 04.05.2015. The booking was under plan 10,10,20,40 with 20% to be paid at possession as per the commitment of the officials of the respondents. The complainants at the time of signing the application form, for the first time got to know that the project is being made by Oasis Landmarks LLP, however the application form was received by officials of the respondent no. 2 on 26.05.2015. The officials propounding to be the part of the respondent no. 1, company said it's a subsidiary company of Godrej Properties. The complainants who expressed their anguish that

they were being misled and informed that the respondent no.1 has been created by respondent no. 2 to construct the project and the project will always be the project of the respondent no. 2. It is submitted that the respondent no. 2 has conspicuously absent/hid them at the time of signing of the application form as per the development agreement dated 22.09.2014, initially, respondents no. 2 and 3, declared that development rights of OBPL existed in favor of Godrej Properties before the deed of cancellation dated 22.09.2014. Thus, respondent no. 2 did not disclose that they were not the project developers.

V. That the complainants believing the representations made by respondents relented and signed the said form. The 2nd installment was to be made within 60 days, till November 2015 the complainants had made payment of 20% of the cost of the flat. However, the respondents were obligated to provide the allotment letter within 45 days of the booking and the BBA within 45 days, thereafter; same were the terms the application form. Thus the respondents were in breach of their own terms from day one. On 16.11.2015, received an allotment letter wherein the total sale consideration was mentioned as Rs.1,18,10,670/-. The basic sale price of the apartment was Rs.97,78,370/- and the PLC was Rs.2,03,750/- and the respondents were charging an amount of Rs.7,09,050/- for car parking which is not only illegal but also usurious.

VI. That the buyer's agreement was executed between the parties on 15.12.2015, 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 complainant have paid huge amounts being approximately Rs.25 Lacks, 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 the respondents raised a demand in March 2016, for payment of 20% of the amount which was payable at the time of completion of superstructure. They raised a query as to when the project has just been launched then how could the superstructure be completed within 10 months of having received the application form and that too when the booking was done in a pre-launch scheme, the respondents instead of giving a proper reply, threatened the complainants in various meetings held in-person with the concerned officials of the respondents and stated that in case they wished to retain their apartment the complainants would have to pay the amounts as and when they are demanded otherwise the complainants shall be burdened with interest @15%. It was categorically put to the respondents that if the completion of superstructure milestone is achieved by the respondents in March 2016 then for what reasons the possession of the unit was scheduled to be handed over after a span of two years thereafter, to which the officials of the respondents had no answer, whatsoever.

VIII. That the buyer's agreement represented that the construction shall be completed within a period of 46 months with a grace period of 6 months thereafter albeit this was in gross contradiction of their commitment that the said period was to be from date of booking whereas in the buyer's agreement it was stated that it was from the date of allotment, i.e. 16.11.2015, thus taking advantage of the money of the complainants for a period of 6 months.

IX. That a brief encapsulation of the entire chain of events would be that the complainants booked in pre-launch offer in May, 2015, the construction did not start till August, 2015 and in March, 2016 and 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 mala fide of the respondents. Thereafter, on 03.09.2016 within 6 months of having raised the invoice for payment towards the completion of superstructure demanded the payment for the next 40% which was to be made at the time when the finishing was competed i.e., when the brickwork and plaster work was completed in the entire building.

X. Thereafter, complainants requested the respondents to grant them some time as the payments were being raised within such a short span of time although it was committed that the same would be in a phased manner spread out over 46 months with the major chunk of payments being demanded within 6 months of possession date. The respondents had demanded 80% of the flat cost within a period of 16 months of booking, thus sending the financial planning of the complainants for a toss. Thereafter, the complainants sought help of the respondents to help them to get a loan, the said commitment was also clearly mentioned in the buyer's agreement, that the respondents shall assist the complainants in obtaining a loan. The complainants made the payment after having faced a lot of harassment and having been mentally traumatized by the respondents albeit with delay as the complainants had to avail a loan as the payment which as per the respondents was scheduled to be paid in 2018 was being asked for in September 2016, thus disrupting the entire financial planning of the complainants.

XI. That to the further shock and amazement of the complainants, they received letters in May- June, 2018 intimating them that the respondent 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 meeting with the officials of the respondents to inquire about the status of the project and 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 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.

XII. That the complainants as on date as per the statement of account provided by the respondents have paid an aggregate amount of Rs.99,04,297/- to the respondents. The said ploy has been adopted by the respondents with multiple clients so that they can make wrongful gains from forfeiture and secondly, are able to sell the apartment at higherrates, which have been inflated by it. The respondents have made material changes to the project wherein they have reduced the size of the project, increased the number of dwelling units and also increased the number of towers apart from demanding payment in total violation of the terms of their RERA registration certificate, 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 adverse for the complainants.

XIII. That the complainants along with other homebuyers filed certain RTI's with this Authority 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 entire 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 BBA (the project lands under HRERA Registration 50 & 54 of 2017 are collectively Godrej Icon project lands). The complainants, thereafter, got hands on the registration certificate of the project (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 only for 6.8 acres of land. That the change in project land has nowhere been disclosed to either the complainants or any other allottees and the respondents 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 less density of flats being less than 40 flats per acre, thus more open areas, whereas currently taking into account the reduced project land size and increase in number of flats, the density of flats per acre has crossed more than 55 flats per acre. Thus, causing grave prejudice to the rights of the complainants along with the other allottees.

XIV. That the various additional illegal aspects of the complaint comprise of the following submissions:

- Fraudulent misrepresentation of project land size in the BBA.
- That as per the attached buyer's agreement while declared project lands in BBA is 9.359 acres.
- Project Land as per the RERA Judgment is not more than 6.959 acres.
- The respondents in the June 2019 and 2020, filed a Six Months compliance report, therein, the developer is not respondent no. 1 and land which is claimed to be increased is same and hence, misrepresented the facts.

- The respondent no. 2 and 1 are having principal and subsidiary company relationship but the LLP company (respondent no.1 claims not be the part of Godrej) mis-representation.
- The respondent no. 3, M/s. Oasis Build Home Pvt. Ltd. is missing.
- The respondent no. 1, in their Application for revised environmental Clearance dated 05.12.2018, themselves disclosed to the Ministry of Environment, Forests and Climate Change that the net land available for both the projects, i.e. Godrej Oasis and Icon is 12.219 Acres. Thus their lies have in their own documents surfaced, which they cannot deny.

XV. 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 RERA licenses. 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.

XVI. That the complainants along with the other homebuyers having failed to get any redressal of their grievances from the respondents who were constrained to send an e-mail on 15.07.2018 addressed tone Mr. Mohit Malhotra, CEO of Godrej Properties and also to the Town Planner, HUDA seeking redressal to their objections with respect to the property. The complainants not having received any cogent response from the respondents and again having made to wait, 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 03.12.2021 was sent on the complainants behalf to the respondents which was duly delivered.

XVII. That the respondents have clearly defaulted in their own statutory obligations and have not taken prior permission of the stake holders before making changes to the layout plan as well have not disclosed the actual status and size of the property and by disclosing a much larger size have misrepresented to the customers of the actual size of the project. It is trite law that after bookings have been taken while showing a particular site Plan as well as a particular plot size and also included in the signed BBA, any change being made to the layout plan/property area would have to entail permission being taken from the stake holders by the developer so that no stake holder is caused any prejudice.

XVIII. That it is a settled law where the complainants are 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 complainants: -**

4. The complainants have sought following relief(s):

I. Direct the respondent to refund the entire principal amount of the complainants alongwith monthly compounded interest @ 15% p.a. or as per RERA guidelines at base rate (of SBI at the time of booking in 2015) + 2%, as per Rules of 2017.

II. Direct the respondents to pay an amount of Rs.2,00,000/- to the complainants as litigation costs/legal expenses.

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 no. 1 and 3

6. The respondent nos. 1&3 have contested the complaint on the following grounds: -

i. That by way of background, it is submitted that the complainants 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 30.04.2015.

ii. That pursuant to the said application, the complainants were allotted apartment bearing no. D0802 on 8th floor, in Tower D, in the respondent's project namely "Godrej Icon" by way of an allotment letter dated 16.11.2015. The complainants received the allotment letter where the total sale consideration of the said apartment was Rs.1,18,10,670/- excluding taxes. Thereafter, a builder buyer agreement was also executed between both the parties on 15.12.2015.

iii. That the complainants opted for a construction linked plan and the tentative date of delivery was 48 + 6 months (Clause 4.2 of the buyer's agreement) from the date of allotment letter dated 16.11.2015. Therefore the tentative date of possession comes out to be 16.05.2020. Further, as per clause 2.4 of the agreement clearly stated that if the complainants fails to pay any installment 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 installments along with simple interest at the rate of 15% per annum on the outstanding from the due date till the date of actual payment.

iv. That, the application form dated 30.04.2015, the allotment letter dated 16.11.2015, and apartment buyer agreement dated 15.12.2015, (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 fulfillment of obligations and responsibilities of the buyer. Further, as per clause 5.4 of the agreement categorically stipulated that if the complainants fails to take the possession of the apartment, the same shall be construed as the complainant's default.

v. That owing to the continuous default and after giving several reminders to the complainants, the respondent was constrained to issue termination letter. Despite completing the construction of the apartment along with the basic amenities and obtaining the OC within the promised timelines, the complainants have failed to clear their 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 licence no. 85 of 2013 dated 10.10.2013 on a contiguous land parcel admeasuring 13.759 acres in order to develop a group housing residential society in sector 88A/89A, Village Harsaru, Gurugram, Haryana. 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.1) ('developer'). That the developer accordingly got the zoning plan on 11.10.2013 and building plans on 09.04.2014 approved from the competent authority i.e. DTCP.

vii. The said land was to be developed in phases namely phase Oasis and 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.

viii. That, in meantime, OBPL obtained an additional license for an 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.

ix. 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 would 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 Authority.

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

xi. 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 complainants.

xii. That the respondent carried out the construction of the project at a considerable speed and achieved the initial construction milestones. The respondent could complete the construction and the occupancy certificate dated 18.09.2020.

xiii. 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 31.10.2020. 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.

xiv. That in flagrant violation of their obligations, the complainants failed to make the payments and committed a default in terms of application form/allotment letter and apartment buyer agreement. It is submitted that the complainants have failed to make payments towards the construction linked invoices and as on 26.08.2021 a sum of Rs.25,03,692.48/- as per the statement of accounts and Rs.8,42,029/- as per the statement of Interest is outstanding and payable by the complainants. Further, the respondents had sent several reminder letters and emails on 13.10.2016, 05.11.2016, 22.12.2016, 14.04.2021 to the complainants however the complainants had failed to pay any attention to such reminders.

xv. That the complainants stopped making payments and chose to ignore all the reminder letter and calls from the respondent. Thereafter, the respondent

having no other option were compelled to issue a pre-termination letter dated 25.05.2021 as per the terms and conditions of the agreement.

xvi. Despite giving additional time and sending reminder letters and emails, the complainants failed to perform her obligations and as such the respondent was constrained to issue a termination letter dated 26.08.2021, wherein the respondent categorically informed the complainants that since they have neglected to make the payment of their outstanding dues, the booking of the apartment stands rejected and amount of Rs.42,06,337/- stands forfeited in terms of the agreement.

xvii. 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 complainants. There is no misrepresentation or violations of any rules of RERA nor that has the complainant suffered any loss attributable to the respondent. Therefore, this Authority, after taking due cognizance of the preliminary submissions, 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, thus the Authority may dismiss the present complaint forthwith with exemplary costs. 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 the parties.

8. The complainants and respondents have filed the written submissions on 07.08.2024 and 08.08.2024 respectively, which is taken on record and has been considered by the Authority while adjudicating upon the relief sought by the complainants.

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 31.05.2023, the respondent no. 2 (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. 1 & 3. Moreover, respondent no. 1 issued the allotment letter to the complainant(s) and also, all the payment receipts have been issued to the complainant(s) by respondent no. 1 only. Further, the buyer's agreement was executed between the complainants and the respondent no. 1&3, and the complainant(s) in their complaint failed to justify their claims against respondent no.2 specifically. Accordingly, respondent no. 2 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. 2 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. 1 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 promoter in whose allocated share the apartments have been bought by the respondent no 1 and respondent no. 3 who have received the payments from the allottees. In view of the same, the contention/objection of respondent no. 2 stands rejected.

G. Findings on the relief sought by the complainants

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.

16. The complainants have submitted that on 26.05.2015, after going through brochure of respondent about its project "Godrej Icon" and also payment plan, they booked a residential unit bearing no. D0802 in said project, namely, Godrej ICON located in Sectors 88A and 89A, Gurugram, Haryana. They received an allotment letter dated 16.11.2015, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,18,10,670/- and the builder buyer's agreement was to be signed within 45 days. The complainant signed and executed BBA on 07.04.2016, where the project land was mentioned as 9.359 acres and it was also clearly mentioned that Haryana Apartment Owners Act shall be applicable to this agreement. 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. The complainants while signing the application form for first time got to know that the project is being developed by M/s Oasis landmark LLP i.e., respondent herein. They were being misled was informed that the Oasis Landmarks LLP is a company of the Godrej property and has been created by the respondent to make the project and the project will always be the project of the

Godrej property and even the application form stated OBPL as a joint development partner. When the BBA was executed between the parties it was clearly mentioned that the project land area 9.359 acres further the name of the Godrej property was missing.

17. Further, on March 2016, they received a demand notice of 20% of amount to be paid at the time of completion of super structure without getting query as to when the project was launched. On 03.09.2016, within 6 months of having raised the invoice of payment, they received another demand for the next 40%, which was actually to be paid at the time when finishing work was completed i.e., when the brickwork and internal plaster work was completed in the entire building. Thereafter, kept on inquiring about the status of the project and why when 80% of the flat cost within a period of 16 months of booking, thus sending the financial planning of the complainants for a toss. The complainants thereafter sought help of the respondents to help them to get a loan, the said commitment was also clearly mentioned in the BBA, that the respondents shall assist the complainants in obtaining a loan. They made the payment after having faced a lot of harassment and having been mentally traumatized by the respondents albeit with delay as the complainants had to avail a loan as the payment which as per the respondents was scheduled to be paid in 2018 was being asked for in September 2016, thus disrupting the entire financial planning of the complainants. The complainant further submitted that they 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. Failing to get any positive response from the respondents, they were send a legal notice on 03.12.2021, with request to cancel their allotment and sought refund of deposited amount.

18. The respondent has contended that the complainant has defaulted on several occasions and failed to pay timely construction linked installment post the

execution of the agreement. Further, clause 2.10 of the apartment buyer agreement clearly stipulated that in the event of non-payment of any installment by the complainant as per the schedule of payments set out in Schedule VII of the agreement, the respondent 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. Moreover, clause 13 of the application from and clause 2.5 of the apartment buyer agreement clearly stipulated that 20% of the sale consideration/cost of the property was to be considered/treated as earnest money which was meant to ensure performance, compliance, and fulfillment of obligations and responsibilities of the buyer. Clause 2.5 of the buyer's agreement is reproduced as under for ready reference.

> *2.5 "It has been specifically agreed between the Parties that, 20% of cost of property plus applicable taxes, shall be considered and treated as earnest money under this Agreement ("Earnest Money"), to ensure the performance, compliance and fulfillment of the obligations and responsibilities of the Buyer under this Agreement.*

Now, the question before the Authority is whether the complainants/allottees is entitled to refund the entire amount with deduction/without deduction as the complainants has not challenged the validity of the cancellation of the unit?

19. The Authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

S. No.	Payment due on	Value
1	On booking	5 Lakh (Booking amount)
2	Within 60 days of booking	10% of COP* less booking amount
3	Within 5 months from booking	10% of COP*
4	On completion of superstructure	20% of COP*
5	On completion of finishing (Completion of brickwork and internal plaster)	40% of COP*
6	On intimation of possession	20% of COP*

*COP- Cost of Property

20. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that as per clause 4.2 of the

agreement dated 15.12.2015, the possession of the apartment was to be delivered by 16.03.2020. However, the respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 29.03.2019, of the project where the subject unit is situated, i.e., before the due date of possession. Thereafter, the respondent/promoter has issued various reminder cum demand letters to the complainants and requested to pay the outstanding dues but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide termination letter dated 26.08.2021 and threatened the complainants to forfeit the entire amount paid by them. It is matter of record, that the complainants booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs.99,04,297/- towards total consideration of Rs.1,18,10,670/- which constitutes 83.85% of the total sale consideration and the last payment was made on 27.06.2017. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 29.03.2019.

21. As per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per buyer's agreement dated 15.12.2015. The respondent after giving reminders to the complainants for making payment for outstanding dues as per payment plan, has cancelled the subject unit. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit. The Authority observes that neither the complainants in their complaint nor during proceedings the counsel for the complainants challenged the validity of cancellation as the unit of the complainants has cancelled vide letter dated 26.08.2021, prior to the filing of the present complaint. Further, there is no delay to complete the construction of the project and the respondents have obtained the occupation certificate of the project where the unit of the complainant is situated from the competent

authority. The complainants have paid the last payment on intimation of possession i.e., 20% of cost of property. Despite issuance of numerous reminders, the complainants have failed to pay the outstanding dues and take the physical possession of the allotted unit.

22. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, has already prescribed vide Regulations, 11(5) of 2018 that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer. Therefore, in view of the above, the contention of the respondents w.r.t. forfeiture of 20% of the sale consideration/cost of the property to be considered/treated as earnest money stands rejected.

23. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** *(decided on 29.06.2020) and* ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** *(decided on 12.04.2022)* ***and followed in CC/2766/2017 in case***

titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was farmed providing as under: -

> *"**5. AMOUNT OF EARNEST MONEY***
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot /building as the case may** be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

24. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the reaming amount along 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 termination/cancellation 26.08.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II **Direct the respondents to pay an amount of Rs.2,00,000/- to the complainants as litigation costs/legal expenses.**

25. The complainants are 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

26. 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 respondent/promoter is directed to refund the paid-up amount of Rs.99,04,297/- after deducting 10% of the sale consideration being earnest money along with an interest @11.10% p.a. as prescribed under rule 15 of the Rules, 2017 on the refundable amount, from the date of termination/cancellation 26.08.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

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(s) and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainants.

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

28. Files be consigned to the registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.02.2025