

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

Date of decision: 18.02.2025

NAME OF THE BUILDER		Oasis Landmarks LLP.	
PROJECT NAME		Godrej ICON, Sector- 88A & 89A, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/2384/2022	Praful Chander Agarwal and Sanjana Agarwal Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainants) Adv. Saurabh Guaba (Respondents)
2.	CR/1526/2022	Lt. Col. Rippon Bhalia Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)
3.	CR/1131/2022	Ravi Gulgulia and Chandrakantha Gulgulia Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainants) Adv. Saurabh Guaba (Respondents)
4.	CR/1187/2022	Meva Singh Sahota and Kulwinder Sahota Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainants) Adv. Saurabh Guaba (Respondents)
5.	CR/1165/2022	Sadhna Maheshwari Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)

6.	CR/1134/2022	Archna Jain Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)
7.	CR/553/2021	Rajat Arora Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)
8.	CR/2744/2020	Ajay Vohra Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)
9.	CR/3069/2020	Sachin Mittal Vs. M/s Oasis Landmark LLP (R1) M/s Godrej Properties (R2) M/s Oasis Buildhome Private Limited (R3)	Adv. Rohit Oberoi (Complainant) Adv. Saurabh Guaba (Respondents)

CORAM:

Shri Arun Kumar
 Shri Vijay Kumar Goyal
 Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of 9 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Godrej ICON", Sector- 88A and 89A, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Oasis Landmarks LLP and others. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking refund of the unit along with interest.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Godrej ICON", Sector- 88A and 89A, Gurugram, Haryana.	
Project area	9,359 acres	
Nature of the project	Group housing colony	
DTCP license no. and other details	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.
RERA Registered/ not registered	Registered vide no. 54 of 2017 dated 17.08.2017 Valid up to 30.04.2020	
Occupation certificate	29.03.2019 for towers no. A to E and Community Building-2, and Convenient Shopping- 2. 18.09.2020 for towers no. 6 to 10 and EWS block.	
Possession clause as per buyer's agreement	4.2 <i>The Developer shall endeavour 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.</i>	

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant(s) in Rs.	Date of surrender request made by the complainant
1.	CR/2384/2022 Praful Chander Agarwal and Sanjana Agarwal V/s Oasis Landmark LLP and others DOF: 31.05.2022 RR: 18.08.2022	C-0601, 6 th floor, tower/block-C, [Page 188 of complaint]	AL:- 03.12.2015 [Page no. 138 of complaint] BBA 07.04.2016 (Page no. 144 of the complaint)	03.06.2020 (Note: - 48 months from date of issuance of allotment letter i.e., 03.12.2015 + 6 months grace period)	TSC: 1,16,75,580/- (As per payment plan page no. 192 of the complaint) AP: 1,23,76,008/- (As per SOA dated 25.06.2021 at page no. 205 of the complaint)	07.04.2022 (Page no. 268 of the complaint)
2.	CR/1526/2022 LT Col. Rippon Bhatta V/s OASIS Landmark LLP and others DOF: 12.04.2022 RR: 31.05.2023	ICONIC3001, 30 th floor, Tower-Iconic (Page 134 of complaint)	AL:- 22.11.2016 [Page 125 of complaint] BBA 18.01.2016 (Page no. 129 of the complaint)	22.03.2021 (Note: - 46 months from date of issuance of allotment letter i.e., 22.11.2016 + 6 months grace period)	TSC: 1,65,56,60/- (As per BBA on page 180 of complaint) AP: 35,37,507/- (As per SOA dated 30.06.2018 at page 192 of the complaint)	07.07.2018 (page 307 of reply)
3.	CR/1131/2022 Ravi Gulgulia and Chandrakantha Gulgulia V/s OASIS Landmark LLP and others DOF: 25.03.2022 RR: 31.05.2023	ICONIC0902, 9 th floor, Tower-Iconic (Page 163 of complaint)	AL:- 18.11.2015 [Page 152 of complaint] BBA 19.02.2016 (Page no. 158 of the complaint)	18.03.2020 (Note: - 46 months from date of issuance of allotment letter i.e., 18.11.2015 + 6 months grace period)	TSC: 2,40,57,472/- (As per BBA on page 209 of complaint) AP: 2,59,05,097/- (As per SOA dated 08.11.2021 at page 230 of the complaint)	08.03.2021 (Page no. 292 of the complaint)

4.	CR/1187/2022 Meva Singh Sahota and Kulwinder Sahota V/s Oasis Landmark LLP and others DOF: 06.04.2022 RR: 03.03.2023	C0701, 7 th floor, Tower-C (Page 149 of complaint)	AL:- 28.10.2015 [Page 139 of complaint] BBA 06.01.2016 (Page no. 145 of the complaint)	28.04.2020 (Note: - 48 months from date of issuance of allotment letter i.e., 28.10.2015 + 6 months grace period)	TSC: 1,09,25,082/- (As per BBA on page 193 of complaint)/- AP: 1,15,11,537/- (As per SOA dated 20.11.2021 at page 206 of the complaint)	03.12.2021 [Page 263 of complaint]
5.	CR/1165/2022 Sadhna Maheshwari V/s OASIS Landmark LLP and others DOF: 28.03.2023 RR: 31.05.2023	ICONIC2102, 21 st floor, Tower-Iconic (Page 142 of complaint)	AL:- 14.12.2015 [Page 134 of complaint] BBA 14.12.2015 (Page no. 137 of the complaint)	14.04.2020 (Note: - 46 months from date of issuance of allotment letter i.e., 14.12.2015 + 6 months grace period)	TSC: 2,06,76,420/- (As per BBA on page 188 of complaint) AP: 2,24,41,195/- (As per SOA dated 09.07.2021 at page 201 of the complaint)	09.11.2021 (Page no. 261 of the complaint)
6.	CR/1134/2022 Archana Jain V/s OASIS Landmark LLP and others DOF: 25.03.2022 RR: 31.05.2023	ICONIC1402, 14 th floor, Tower-Iconic (Page 143 of complaint)	AL:- 14.12.2015 [Page 134 of complaint] BBA 15.12.2015 (Page no. 138 of the complaint)	14.04.2020 (Note: - 46 months from date of issuance of allotment letter i.e., 15.12.2015 + 6 months grace period)	TSC: 2,40,57,472/- (As per BBA on page 190 of complaint) AP: 2,61,02,739/- (As per SOA dated 02.12.2020 at page 204 of the complaint)	09.11.2021 (Page no. 264 of the complaint)
7.	CR/553/2021 Rajat Arora V/s	A0701, 7 th floor, tower-A	AL:- 18.11.2015 [Page 86 of complaint]	18.05.2020 (Note: - 48 months from	TSC: 1,10,60,160/-	11.02.2020

	OASIS Landmark LLP and others DOF: 28.01.2021 RR: 09.05.2023	[Page 94 of complaint]	BBA 19.02.2016 (Page no. 90 of the complaint)	date of issuance of allotment letter i.e., 18.11.2015 + 6 months grace period)	(As per allotment letter on page 88 of complaint) AP: 92,21,924/- (As per SOA dated 18.06.2021 at page 301 of the reply)	(Page no. 217 of the complaint)
B.	CR/2744/2020 Ajay Vohra V/s OASIS Landmark LLP and others DOF: 12.10.2020 RR: 16.05.2023	C-1102, 11 th floor, Tower-C (as per page no. 90 of complaint)	AL: 20.01.2016 (as per page no. 80 of complaint) BBA 15.01.2016 (page no. 153 of reply)	20.07.2020 (Note: - 48 months from date of issuance of allotment letter i.e., 20.01.2016 + 6 months grace period)	TSC 1,44,37,950/- (page no. 303 of reply) AP:- 1,14,36,824/- (page no. 303 of reply)	10.02.2020 (Page no. 173 of complaint)
9.	CR/3069/2020 Sachin Mittal V/s OASIS Landmark LLP and others DOF: 05.10.2020 RR: 17.02.2023	D-0301, 3 rd floor, tower/block-D, [Page 105 of complaint]	AL: 05.11.2015 (Page no. 94 of complaint) BBA 14.12.2015 (Page no. 100 of the complaint)	05.05.2020 (Note: - 48 months from date of issuance of allotment letter i.e., 05.11.2015 + 6 months grace period)	TSC: 1,14,41,675/- (As per payment plan page no. 148 of the complaint) AP: 96,70,448/- (As per SOA dated 22.02.2018 at page no. 176 & 177 of the complaint)	04.02.2020 (Page no. 272 of the complaint)
Relief Sought by the complainant(s):-						
i. To refund the entire principal amount already paid to the respondents along with monthly compounded interest @ 15% per annum or as per RERA guidelines.						
ii. Compensation						
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:						
Abbreviation	Full form					
DOF	Date of filing of complaint					

RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/2384/2022** titled as ***Praful Chander Agarwal and Sanjana Agarwal V/s Oasis Landmark LLP and others.*** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/2384/2022 titled as Praful Chander Agarwal and Sanjana Agarwal V/s Oasis Landmark LLP and others.

S. No.	Particulars	Details
1.	Name of the project	"Godrej Icon" Sectors-B8A & 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.	C-0601, 6 th floor, tower/block- C, [Page 188 of complaint]
7.	Unit measuring	1498 sq. ft. (super area) 1058 sq. ft. (carpet area) [Page 188 of complaint]
8.	Allotment letter issued in favour of the complainants by respondent no. 2	03.12.2015 [Page no. 138 of complaint]
9.	Date of execution of buyer's agreement between the	07.04.2016 (Page no. 144 of the complaint)

	complainants and the respondent no. 2 & 3	
10.	Possession clause	4.2 <i>The Developer shall endeavour 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.</i> (Page no. 160 of the complaint).
11.	Due date of possession	03.06.2020 (Note: - 48 months from date of issuance of allotment letter i.e., 03.12.2015 + 6 months grace period)
12.	Total sale consideration	Rs.1,16,75,580/- (As per payment plan page no. 192 of the complaint)
13.	Total amount paid by the complainants	Rs.1,23,76,008/- (As per SOA dated 25.06.2021 at page no. 205 of the complaint)
14.	Offer of possession	31.10.2020 [Page 259 of reply by R1 & R3]
15.	Occupation certificate	18.09.2020 [Page 244 of reply by R1 & R3]
16.	Legal notice sent by the complainants seeking refund of the entire amount paid along with interest	07.04.2022 (Page no. 268 of the complaint)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -
 1. That in June 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,



- which 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.
- II. That the amenities offered and other luxurious services as were committed by the respondents included but not limited to a Skywalk @ Rs.130 ft., star gazing platform, party deck, barbeque counter, reflexology court, Zen garden, a kilometer long jogging track and yoga and meditation area all at a height of 130 ft. also including a 32 storey **Iconic Tower** with Helipad. It is submitted that alongside the above, the respondents had offered a luxury living with international standard amenities such as "*Club Concierge, Spa and Holyfield Gym*" along with a club aqua and an infinity pool. It is further submitted that one amongst the aforementioned amenities also being the most prominent one was its low density development with a density of less than 40 units/acre (356 units in ~ 9.359 acres), as was committed to the complainants at the time of booking.
- III. That the complainants booked a 2BHK + Study (Type G) the carpet area of the unit measuring 98 square meters and the super built up area of 139 square meters unit bearing No. C0601 in the Icon project by paying an amount of Rs.5 Lacs as booking amount on 30.06.2015. The booking was under 10:10:20:40:20, plan with 20% to be paid at possession as per the commitment of the officials of the respondents. The project was sold by officials propounding themselves as employees of M/s Godrej Properties and suggesting that the said project is a Godrej project. 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 30.06.2015 the

officials propounding to be the part of the respondent no. 2 Company, to allay the fears of the complainants, assured them that the respondent no. 1 is a subsidiary company of Godrej Properties and they have nothing to fear off as it is Godrej Properties with whom they shall be dealing with. That the respondent no. 2 has conspicuously absent/hid themselves, however as per the development agreement dated 22.09.2014, initially, the respondent no. 1 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. The complainants who expressed their anguish that they were being misled and were 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.

- IV. 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 September 2015, the complainants had made payment of 20% of the cost of the flat, without receiving an allotment letter or the BBA having been executed. 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 of the application form. Thus the respondents were in breach of their own terms from day one.
- V. That the complainants, received an allotment letter on 03.12.2015, wherein the total sale consideration was mentioned as Rs.1,16,75,580/-. The BSP of the apartment was Rs.97,37,000/- and the PLC was Rs.1,87,250/- and the respondents were charging an amount of Rs.3,75,000/- for car parking which is not only illegal but also usurious.

- VI. That the buyer's agreement was executed between the parties on 07.04.2016, although many of the terms as agreed upon and represented/assured by respondents at the time of booking were changed without giving any intimation to the complainants. By this time, the complainants have paid huge amounts being approximately Rs.24 Lacs, and were forced to continue with the project inspite of the various misrepresentations and blatant violations of the terms as agreed upon by the respondents.
- VII. That the respondents raised a demand to the complainants, in June 2016, for payment of 20% of the amount which was payable at the time of completion of superstructure. The complainants raised a query as to when the project has just been launched then how could the superstructure be completed at the given point of time, the respondents instead of giving a proper reply, threatened the complainants that in case they wish to retain their apartment they would have to pay the amounts as and when they are demanded otherwise they shall be burdened with interest @15%. It was categorically put to the respondents that if the completion of superstructure milestone is achieved by it in June 2016 then for what reasons the possession of the unit was scheduled to be handed over after a span of two-three years thereafter, to which the officials of the respondents had no answer, whatsoever.
- VIII. That the complainant's relatives/associates upon visiting the project were further taken aback by what lay in front of them as the tower in which their flat was booked was not at the stage of completion of superstructure and that the respondents had raised such frivolous demands. The complainants thereafter again approached the respondents and stated their dismay at the conduct of the respondents, however, their officials stated that since some



- towers are at the stage, the payment is being raised and the next payment shall be raised only after a period of around two years i.e. around 2-3 months before actual possession being handed over.
- IX. It was further stated 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.
- X. That a brief encapsulation of the entire chain of events would be that the complainants booked in June, 2015, the construction did not start till August, 2015 and in June 2016, the entire superstructure consisting of the project was ready. It is submitted what can be deduced from the entire sequence of events is that either the construction was done at a super-fast speed such that the quality of construction was not paid heed to, or the payments were demanded when the milestones were not reached, thus, showing the malafide of the respondents.
- XI. That the respondents thereafter on 06.01.2017 within 7 months of having raised the invoice for payment towards the completion of superstructure demanded the payment for the next 40% which was to be made at the time when the finishing was completed i.e., when the brickwork and internal plaster work was completed in the entire building.
- XII. That thereafter the complainants demanded the status update on the construction of the property, however the respondents provided vague and absurd construction updates which in itself depicted that the construction was not being done at the pace at which the payments/ installments demands were being raised by it. The exact same updates were sent to the owners of other flats, thus showing the falsity of their stand and their mala

fide intentions. Respondents were sending construction updates from which it became evident that the milestone for which they had taken money had not even been completed and the payment had not become due.

- XIII. That to the further shock and amazement of the complainants, they were informed by the other allottees that the respondents had unilaterally changed the sanctioned plan. They received a letter stating that there was a change in builder which was also done without intimating the complainants. The complainants thereafter kept on inquiring about the status of the project and why when 80% of the cost of property was demanded in 2017 than for 2-3 years the project has not been completed. It seemed apparent as to why the 40% invoice towards internal Finishing was raised an entire year in advance while work was still under progress thereby either forcing the complainants to withdraw as they would not be able to arrange the funds and the respondents could benefit from their withdrawal and illegally usurp their money in the name of forfeiture, although they were not entitled for the same or forcing the complainants to pay and thus enjoying their money well in advance. The complainants also found out that the respondents were demanding payment in clear abrogation and derogation of the terms of the Act of 2016.
- XIV. That the respondents thereafter demanded the final amount of 20% which was to be paid at the time of handing over of possession on 31.10.2020, claiming that the said flat was ready for possession. Vide possession letter, a demand of Rs.25,17,886/-, was made and an amount of Rs.10,486/- was disclosed as compensation. Thus, the respondents had admitted that the project was delayed and hence compensation was being paid to the complainants. It would be pertinent to submit that a bare perusal of the letter would evince that the complainants would only be permitted to visit

the apartment in case they made the payment and in case they did not make the payment, the complainants would not even get to see as to what is being handed over to them. Thus, amply displaying the high handedness of the respondents and their malafide intention.

- XV. That the complainants thereafter requested for an additional time of 12 days, which was duly granted by the respondents. They made the payments qua the last installment on 30.11.2020 and thereafter kept on requesting the respondents to provide the occupation certificate and the completion certificate as well as when the sale deed shall be executed, so that the complainants could take possession of the property however till 27.10.2021, the respondents kept on avoiding this query and in fact till date have not provided the completion certificate to the complainants.
- XVI. That the complainants had been overcharged an amount of Rs.6 Lakhs approximately, without informing the complainants and as on date as per the statement of account provided by the respondents have paid an aggregate amount of Rs.1,23,76,008/- to the respondents. That the complainants having not received any response for almost a year and in fact till date not having received the documents as requested by them got fed up of the boorish attitude of the respondents. The respondents have made material changes to the project wherein they have reduced the size of the project, increased the number of dwelling units apart from demanding payment in total violation of the terms of their RERA License, thereby not only being deficient in the customer service as was promised to be provided but also misseling the project and changing the livability in the project to the adversity of the complainants.
- XVII. That the complainants along with other homebuyers filed certain RTI's with RERA and Director Town and Country Planning, Haryana (DTCP) to find out



about the actual facts as to the actual status of the project. Through RTI filed by the other home-buyers before this Authority, which had granted the License to the respondents for the project titled as Godrej Icon and had sought documents as filed along with the application for grant of license. The following contradictions and inconsistencies emerged from the said procured documents:

- The respondents in the buyer's agreement as provided in April, 2016 had disclosed the fact that the project is being built on project land which measure 9.359 acres, whereas in the RERA declaration, they have disclosed that the project is being built on project land ad-measuring 6.459375 acres. This leads to reduction in the declared project land from 9.359 acres to 6.459375 acres (by 31% approx.) for Godrej Icon Project in contravention of buyer's agreement (the project lands under HRERA Registration 50 & 54 of 2017 are collectively Godrej Icon project lands). That the complainants, thereafter, got hands on the registration certificate of the project OASIS (Regd. No. 53 of 2017) dated 17.08.2017 issued by this Authority, from wherein it was learnt that evidently the request for the registration of the Project as was made by the respondents vide their application dated 28.07.2017 was made for 6.8 acres of land. It is stated that the change in project land size has nowhere been disclosed to either the complainants or any other allottees and the respondent have been mis-selling the project to hapless customers while leading them to believe that they shall be staying in a project built on larger lands and shall have more open areas than what is actually there.
- The respondents had further failed to disclose that in their submission for getting the environment clearance, they have disclosed an increased number of dwelling units from 662 to 747 (by 13% approx.) on the total project lands (of which the Godrej Icon project and Godrej Oasis were a part). This was in furtherance of their aforementioned lies wherein the respondents had committed that there shall be low density of flats being less than 40 flats per acre, thus more open areas for Godrej ICON, whereas currently taking into account the reduced project land size and increase in number of flats, the density of flats per Acre has crossed more than 55 flats per acre. Thus, causing grave prejudice to the rights of the complainants along with the other allottees.

XVIII. 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 builder buyer agreement provided to other allottees, declared

in paragraph D of page no. 5, their sanction plans, permissions and approvals for development, wherein, clause 'i', discloses the Letter of Intent dated 26.03.2013, from the State of Haryana vide memo No. LC-2751-JE(VA)-2013/34765, in which it is clearly stated that the demarcation plan dated 18.05.2013 as provided by Oasis Buildhome Private Limited, the total area of the site laid out to be 11.05 acres out of which only 6.65 acres was granted for 'GODREJ ICON'. The letter of intent has disclosed the fact that out of this allotted land of 11.05 acres for Godrej Icon only 6.65 acres were to be used for construction only and area measuring 1.629 acres comes under 60 m wide sector road; 0.199 acres comes under 24 m wide internal circulation road, area measuring $(0.325 + 0.325) = 0.650$ comes under 12 m wide service road. Therefore, the fraud committed by the respondents arose when they submitted a site plan including the above 60 m wide road having killa no. 22/2 and 2, measuring 0.694 acres and 0.983 acres, respectively; 12 m wide service road which was added to the killa no. 21/2, measuring 0.524 Acres; 24 m wide road bearing killa no.7/1, measuring 0.500 acres in the Godrej Icon, The demarcation plan on which the Letter of Intent was approved and the Site plan which was later submitted to the RERA Authorities are different, the roads which were acquired from Oasis Build Home Pvt. Ltd had been included in the project lands without the permission of Government of Haryana and to deceive the complainants.

- That as per the attached buyer's agreement while declared project lands in BBA is 9.359 acres – the respondents assured that no part of the project land is to be transferred to the Government and the respondent no. 2 has rights to market/develop the entire project lands and that there are no encumbrances on the project lands. Further in schedule II of this buyer's agreement, project lands when compared with the revised-sanctioned project plan showcase only parcel A as part of the project lands. The said factum was also verified by the complainants and the other allottees by paying a visit to inspect the ongoing project development work. It is stated that the same is the situation in the Patwari's office wherein parcels of land which forms part of the project lands have been acquired way back in 2014, but till date are being included in the project lands. It is further very disheartening that respondents are including lands which have been shown to be a part of the roads/expressway as is being developed and is to be transferred to the Government. Thus are selling public lands as part of project lands, which is not only illegal but also does not behove a company having a 100 year legacy.
- **Project Land as per the RERA Judgment is not more than 6.959 acres** - It is an admitted fact that as per judgment of RERA dated 24.04.2019 the land in Godrej Oasis is 6.8 acres. The said judgment available on HARERA – Gurugram Website, has not been challenged till date and hence, has attained finality. Therefore, net land available for Godrej Icon cannot be more than $[13.759 \text{ acres} - 6.8 \text{ acres}]$ 6.959 acres, unless there is double-selling of land



across the two projects. Hence, it is submitted that an evident mis-selling and fraud has been played upon the customer as 9.359 acres of land was never available for sale under Godrej Icon.

- **The respondents in the June 2019 and 2020, filed a six months compliance report, therein, the developer is not respondent no. 2 and land which is claimed to be increased is same and hence, mis-represented the facts**—the developer as per the report is respondent no. 3, also thereby in the former report disclosing their project details in which the environmental clearance was given for net plot area 49448.14 sq. meter or 12.219 acres, wherein the green area has to be 35.27% of the net plot but same has not been complied by the respondents. They in their part B of Form Rep-1, has fraudulently written the licensed area of 14.684 acres as obtained by the license no. 151 of 2014.
- **The respondent no. 1 and 2 are having principal and subsidiary company relationship but the LLP company (respondent No.1 claims not to be the part of Godrej) mis-representation** - That the registered office, Email address and Phone number are same for both the companies, even the call centre number for Oasis Landmark LLP is same as for Godrej Properties Ltd., further the respondent no. 2 has a 67% stake as well as 67% voting share in the respondent no. 1.
- **The respondent no. 3, M/s. Oasis Build Home Pvt. Ltd. is missing**— That the registered office address of the respondent no. 3 is 6, Jwala Heri Market, Paschim Vihar, West Delhi as per its own various declarations. The said entity has the existing title ownership of project lands and also the original project developer on record. That the respondents have not only misled the complainants and the other allottees but also this Authority as the project lands disclosed to RERA also is not available with the respondents/builders for transfer to the allottees of the project, thus, misleading the Government Authority as well.
- **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.**

XIX. That the complainants, got to know that the respondents have made further changes and have in fact not only increased the number of flats but has also merged a license for play school in the group housing society license and thereafter, transferred the land of the group housing society to the play school, which thereby reduced the green area and the commercial areas so that they can benefit at the cost of the allottees. These unilateral changes



done by the respondents and the willful concealment of the same has caused immense change in the project and has altered the livability of the project altogether and in fact the project is nowhere as was committed to be provided.

- XX. That after further follow-ups from the other allottees, it was learnt by the complainants that the respondents received sanction of the amended sanction plan in January, 2018 and sought objections from the allottees only in May-June, 2018 i.e. after almost 4-5 months of having received the sanction. This is not only manifestly against the principles of natural justice but also against the provisions enshrined under the Act of 2016 which stipulates that any change sought to be done to the sanction plan has to be done only after getting prior approval from 75% of the allottees in the project, whereas the respondents have gravely failed to do so while the Act of 2016, was already in effect and in contravention of its existing registration certificate. The respondents have nowhere in their submissions to DTCP or the environmental authorities disclosed that two separate and distinct projects are being developed but have shown that one project is being developed on 13.759 Acres.
- XXI. That the complainants having failed to get any redressal of their grievances from the respondents lost all their faith in the commitments of the respondents, were constrained to send a legal notice by their legal counsel. Thereafter, a legal notice dated 07.04.2022 was sent on the complainants behalf to the respondents which was duly delivered.
- XXII. That the respondents are in total breach of all the terms and conditions that were committed or agreed in writing or verbally prior to or after the said booking by the complainants. The respondents have not only mentally harassed the complainants but by delaying the project and mis-selling the



same, have even harassed the complainants purposely so that they frustrated into cancelling their booking and so that the respondents can illegally withhold their life savings on the pretext of cancellations and other charges although the same were never agreed upon. The respondents had taken 80% of the cost of property almost three years prior to when they would have been due as also portrayed in the construction updates, further the respondents had kept the said money on false promises of handing over possession by end of financial year 2017-18 but failed to do so, thus showing their mala fides. It is submitted that the respondents offered possession without receiving the occupancy certificate and the completion certificate, took the money and when the complainants found out that the property is incomplete, the respondents for almost a period of 1 year stopped responding to the complainants queries and in fact till date have not provided the complainants with the OC and CC.

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

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
 - I. To refund the entire principal amount already paid to the respondents along with monthly compounded interest @ 15% per annum or as per RERA guidelines.
 - II. Direct the respondents to pay an amount of Rs.2,00,000/- to the complainants as litigation costs/legal expenses.

8. 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 nos. 1 and 3

9. The respondents no. 1 and 3 are contesting 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 30.06.2015. Pursuant to the said application, the Complainants were allotted an apartment bearing no.C0601 on 6th floor, in Tower C, in the respondent's project namely "Godrej Icon" by way of an allotment letter dated 03.12.2015. It is submitted that the complainants received the Allotment letter where the total sale consideration of the said unit was Rs.1,16,75,580/-. Thereafter, an apartment buyer agreement/builder buyer agreement was also executed between both the parties on 07.04.2016.
- ii. That the complainants opted for a construction linked plan and the tentative date of delivery was 46 + 6 months (as per clause 4.2 of the buyer's agreement) from the date of allotment letter dated 03.12.2015. Therefore the tentative date of possession comes out to be 03.04.2020.
- iii. That the application form (clause 15), and the buyer's agreement (Clause 2.5) clearly stipulated and defined earnest money to be 20% of the basic sale price("Earnest Money") which was meant to ensure performance, compliance and fulfilment of obligations and responsibilities of the buyer.
- iv. Further, as per clause 5.4 of the buyer's 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 despite completing the construction of the apartment along with the basic amenities and offering the possession within the promised timelines, the complainants have failed to clear it's outstanding and take possession of the apartment and is now arbitrarily seeking refund without there being any default on the part of the respondent.
- vi. That Oasis Buildhome Private Limited ('OBPL') i.e., 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 09.04.2014 and building plans on 04.09.2015 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.
- xi. 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.
- xii. 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.
- xiii. It may not be out of place to mention here that the said revision was done prior to the enactment of relevant provisions of the RERA. It is further submitted that while revising the building plans, the respondent had duly complied with all the applicable provisions and the changes were carried out after following the due process of the law.

- xiv. That the revision in the building plans is as per the environment norms and the respondent has duly taken the requisite approval for the same.
- xv. 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.
- xvi. That the minor delay in the completion of the project was occasioned due to the force majeure arising out of the Covid 19 Pandemic. It is submitted that immediately 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.
- xvii. That immediately after completion of the apartment and receiving the OC, the respondent no.1 issued a possession intimation letter dated 31.10.2020. However, it is the complainants who have failed to take the possession of the apartment despite the same being completed in all aspects. It is evident that the complainants have no intention of taking possession of the flat on account of fall in the market prices and is now raising frivolous issues in the instant complaint in order to seek refund without there being any default on the part of the answering respondent.
- xviii. 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. It is submitted that there is no misrepresentation or violations of any rules of RERA nor that the complainants have suffered any loss attributable to the respondent/promoter. 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 this 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.

10. 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.
11. The respondent has filed an objection and the reply of the same and written submissions along with the documents for kind consideration of the authority, the same have been taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

12. 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

13. 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

14. 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.

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
16. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgment passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the

outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

17. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

18. On 18.08.2022, 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.

19. 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 Section 2(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;"

20. As per aforesaid provisions of law, respondent no.1 to 3 will be jointly and severally liable for the completion of the project. Whereas the primary responsibility to discharge the responsibilities of promoter lies with 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.

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

21. The respondent raised preliminary objection that the complainants have not approached this forum with clean hands. The counsel for the respondent during proceeding dated 14.01.2025 stated that the complainants along with some of the allottees, subsequent to filing of present complaint, have also filed a civil writ petition before the Hon'ble Punjab & Haryana High Court bearing no. 17120 of 2020 titled as **Mrs. Anita Sardana & Ors. V/s State of Haryana & Ors.**, where identical issues have been raised. It is a settled law that a litigant cannot be allowed to pursue two remedies seeking similar relief, on the same cause of action. It is prayed that present proceedings may be stayed till the disposal of writ petition.

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

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

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

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

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

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

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

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

G.1 To refund the entire principal amount already paid to the respondents along with monthly compounded interest @ 15% per annum or as per RERA guidelines.

27. In brief, the case of the complainants is that the respondent in its brochure specifically mentioned that the project namely, "Godrej Icon" is being developed by Godrej Properties Ltd. Under this impression as also the name

suggests, that the said project is a Godrej Project, the complainants invested their money in the said project. It is only upon signing the application form, they got to know that the project is being developed by M/s Oasis landmark LLP i.e., respondent no. 1 hereinafter. On 30.06.2015, after going through brochure, they booked a residential unit bearing no. C0601 in the said project. They initially paid an amount of Rs.5,00,000/- as booking amount and further made payment of Rs.7,16,903/- on 21.09.2015. Thereafter, respondent no. 1 issued an allotment letter dated 03.12.2015 to the complainants, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,16,75,580/-. The buyer's agreement was executed between the parties on 07.04.2016 and as per clause E of the said BBA, the said project was to be developed on project land admeasuring 9.359 acres. As per clause 4.2 of the BBA, the respondent agreed that construction shall be completed within a period of 48 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.

28. 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 complainants have approached this Authority seeking refund of the entire amount paid by the complainants as they wish to withdraw from the project.

29. The unit in question was allotted in his favour by the respondent/promoter on 03.12.2015 vide provisional allotment letter. Thereafter, the buyer's agreement executed between the parties on 07.04.2016. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 07.04.2016, the possession of the booked unit was to be delivered by 03.04.2020. The occupation certificate for the tower/block in question was obtained on 18.09.2020. The complainants have surrender their unit through legal notice dated 07.04.2022, seeking refund of the paid-up amount with interest on grounds reiterated in the present complaint.
30. The Authority observes that as per brochure at page 45 to 66 (annexure - 3) of the complaint, Oasis Build Home Pvt. Ltd. is a joint venture partner with Godrej Properties. By virtue of the said brochure, the project was being marketed in the name of Godrej Properties and it has the logo of Godrej Properties thus, luring the complainants to book the property. It is also pertinent to mention here that logo of Godrej Properties also appears on the first page of the Buyer's agreement. By mentioning the name and logo of Godrej Properties on the brochure & BBA 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 sated 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.

31. 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."

32. Accordingly, the Authority observes that the said representation of marketing the project by R2 in the brochure, BBA, email dated 17.04.2015 and press release amounts to mis-representation on part of respondents. Since, in the present matter, the complainants are seeking refund being affected by such incorrect, false statement contained in the advertisement or brochure, therefore the complainants are entitled for full refund along with interest under

proviso to section 12 of the Act, 2016 at such rate as may be prescribed. Section 12 of the Act, 2016 is reproduced as under for ready reference:

"12. Obligations of promoter regarding veracity of the advertisement or prospectus: -

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

33. 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 complainants-allottees for such revision in the building plan.
34. In view of the submissions made by the parties and fact on record as well as arguments of the respective parties, the Authority holds the respondents responsible for violations under Sections 12 and 14 (2)(ii) of the Act, 2016 and hereby directs the respondents-promoters to return the entire amount received by it with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,

2017 from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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


35. 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

36. 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 amount received by it from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

- iii. The respondent/promoter is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant(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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of allotment letter, buyer's agreement, due date of possession, total sale consideration and amount paid by the complainant(s)-allottee(s) is mentioned in each of the complaints.
38. Complaint as well as applications, if any, stand disposed off accordingly.
39. True certified copies of this order be placed on the case file of each matter.
40. Files be consigned to registry.


(Ashok Sangwan)
Member

v.) 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.02.2025