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

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| **Complaint no.** | : | **2397 of 2024** |
| **Date of complaint** | : | **07.06.2024** |
| **Date of order** | : | **02.07.2025** |

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| Pankaj Arora,<br>Through SPA Holder Kashti Arora,<br>**R/o:** A-8, SDM Residence, Jind, Haryana-126102. | **Complainant** |
| Versus | |
| **1.** M/s Oasis Landmarks LLP<br>**Regd. Office:** Unit No. 5C, 5th Floor, Godrej One, Pirojshanagar, Vikhroli East, Mumbai.<br>**2.** M/s Godrej Properties<br>**Regd. Office:** 3rd Floor, Tower B, UM House, Plot No. 35, Sector 44, Gurugram, Haryana.<br>**3.** M/s Oasis Buildhome Pvt. Ltd.<br>**Regd. Office:** 6, Jwala Heri Market, Near MDI Market, Paschim Vihar, New Delhi. | **Respondents** |

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| **CORAM:** | |
| Ashok Sangwan | **Member** |
| **APPEARANCE:** | |
| Rohit Oberoi (Advocate) | Complainant |
| Saurabh Guaba (Advocate) | Respondent No.1 |
| None | Respondent No. 2 & 3 |

## ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act

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

## A. Unit and project related details

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

| S. No. | Heads | Details |
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| 1. | Project name and location | Godrej Icon, Sector 88A and 89A, Gurugram |
| 2. | Project area | 9.359 acres |
| 3. | Nature of project | Group Housing Colony |
| 4. | RERA registered/not registered | Registered vide 50 of 2017 dated 12.08.2017 valid upto 31.12.2020<br>54 of 2017 dated 17.08.2017<br>Valid up to 30.04.2020 |
| 5. | DTPC license no. & validity status | 85 of 2013 dated 10.10.2013 valid upto 09.10.2024<br>151 of 2014 dated 05.09.2014 valid upto 04.09.2024 |
| 6. | Allotment letter dated | 18.11.2015<br>(Page 11 of reply) |
| 7. | Date of execution of buyer's agreement | 22.02.2016<br>(page 136 of complaint) |
| 8. | Unit no. | ICONIC2501, 25th floor, Tower- Iconic<br>(Page 140 of complaint) |
| 9. | Unit measuring | 1455 sq. ft. (carpet area)<br>[Page 140 of 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* |

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| | | *a grace period of 6 months over and above this 48 month period ("Tentative Completion Time").*<br>(page 143 of complaint) |
| 11. | Due date of delivery of possession as per clause 4.2 of the said agreement i.e., 48 months from the date of issuance of allotment letter along with grace period of 6 month over and above this period | 18.05.2020<br>(Grace period is allowed as the same is unqualified) |
| 12. | Total consideration | Rs.1,65,56,606/-<br>(as per BBA at page 186 of complaint) |
| 13. | Total amount paid by the complainant | Rs.1,77,61,352/-<br>(page 31 of complaint) |
| 14. | Occupation certificate | 18.09.2020<br>(Page 216 of reply) |
| 15. | Offer of possession | 30.10.2020<br>(page 231 of reply) |
| 16. | Surrender | 26.02.2024<br>(page 281 of complaint) |

## A. Facts of the complaint

3. The complainant vide complaint and written submissions dated 05.05.2025 has made the following submissions: -

I. That instant petition has been signed, verified and instituted by the petitioner through his authorized SPA Holder namely Smt. Kashti Arora authorized vide Special power of Attorney dated 12.04.2024 who being aware of the facts and circumstances of the case.

II. That on 11.04.2015, the complainant came to know about the project titled as ***'GODREJ ICON'*** at Sector 88A and 89A, Gurugram, Haryana. The project plan appended with the project brochure was being marketed with 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 complainant 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 @ 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 complainant at the time of booking.

IV. That the complainant booked a 3BHK + study + utility room unit measuring 2059 sq.ft. unit bearing No. Iconic2501 on the 25th Floor in the respondents "Godrej Icon Project" by paying an amount of Rs.5 Lacs as booking amount on 26.05.2015. 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 complainant 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 01.05.2015. The officials propounding to be the part of the respondent no. 2 said it's a subsidiary company of Godrej Properties. 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 after 2014.

V. That the complainant believing the representations made by respondents relented and signed the said form. The 2nd installment was to be made within 60 days, the complainant 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.

VI. That the complainant, received an allotment letter on 18.11.2015, wherein the total sale consideration was mentioned as Rs.1,65,56,606/-. The BSP of the apartment was Rs.1,33,81,441/- and the PLC was Rs.7,20,650/- and the respondents were charging an amount of Rs.7,50,000/- for car parking which is not only illegal but also usurious.

VII. That the buyer's agreement was executed between the parties on 22.02.2016, 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 complainant. By this time, the complainant has paid huge amounts being approximately Rs.50 Lacs, and were forced to continue with the project in spite of the various

misrepresentations and blatant violations of the terms as agreed upon by the respondents.

VIII. That the respondents raised a demand to the complainant, in September 2017, for payment of 20% of the amount which was payable at the time of completion of superstructure. The complainant 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 complainant that in case they wish to retain his apartment he would have to pay the amounts as and when they are demanded otherwise he 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 September 2017, 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.

IX. 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 his flat was booked was not at the stage of completion of superstructure and that the respondents had raised such frivolous demands. The complainant thereafter again approached the respondents and stated his 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.

X. That the buyer's agreement represented that the construction shall be completed within a period of 48 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.

XI. That a brief encapsulation of the entire chain of events would be that the complainant booked in pre-launch offer in May 2015, the construction did not start till August, 2015 and by September 2017, the entire superstructure consisting of 32 floors 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.

XII. That the respondents thereafter on 26.02.2018 within 5 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.

XIII. That thereafter the complainant 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.

XIV. That to the further shock and amazement of the complainant, he received letters in May-June 2018 intimating that the respondents had unilaterally changed the sanctioned plan. He received a letter stating that there was a

change in builder which was also done without intimating the complainant. The complainant thereafter kept on inquiring about the status of the project and why when 80% of the cost of property was demanded in 2018 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 complainant to withdraw as he 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. The complainant also found out that the respondents were demanding payment in clear abrogation and derogation of the terms of the Act of 2016.

XV. That the complainant has paid an aggregate amount of Rs.1,77,61,352/- along with other maintenance charges to the respondents. The respondents are claiming maintenance charges without even completing the construction of the unit. The respondents have made material changes to the project wherein they have reduced the size of project, increased the number of dwelling units and also increased the number of towers.

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

- The respondents in the buyer's agreement as provided in December 2015 had disclosed the fact that the project is being built on project land which measure 9.359 acres, whereas in the RERA declaration, they have disclosed that the project is being built on project land ad-measuring 6.459375 acres. This leads to reduction in the declared project land from 9.359 acres to 6.459375 acres (by 31% approx.) for Godrej Icon Project in contravention of buyer's agreement (the project lands under HRERA Registration 50 & 54 of 2017 are collectively Godrej Icon project lands). That the complainant, 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 complainant 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 complainant along with the other allottees.

XVII. 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.

- 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. 1 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 complainant and the other allottees by paying a visit to inspect the ongoing project development work. It is stated that the same is the situation in the Patwari's office wherein parcels of land which 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 behoove 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 HRERA – 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 acres – 6.8 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-I, 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. 1 is shown as subsidiary even in the annual reports of the respondent no.2, which is having 66.67% voting rights 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 complainant 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.

XVIII. That the complainant, 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.

XIX. That after further follow-ups from the other allottees, it was learnt by the complainant that the respondents received sanction of the amended

sanction plan in January, 2018 and sought objections from the allottees only in May-June, 2018 i.e. after almost 4-5 months of having received the sanction. 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.

XX. That the complainant having failed to get any redressal of his grievances from the respondents lost all his faith in the commitments of the respondents, was constrained to send a legal notice by their legal counsel. Thereafter, a legal notice dated 26.02.2024 was sent on the complainant's behalf to the respondents which was duly delivered.

XXI. 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 complainant. The respondents have not only mentally harassed the complainant but by delaying the project and mis-selling the same, have even harassed the complainant 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 within six-months of the said money having been taken but failed to do so, thus showing their mala fides.

XXII. That it is a settled law where the complainant is entitled to either the residential unit so booked by him as was also committed to be delivered to him 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.

XXIII. That the complainant did not receive any letter or any mail stating that there was a change in the builder which was done without intimating the complainant. Further, the complainant had paid entire amount for the flat and the possession was offered by the respondent, but merely incomplete flat can't be a proper possession as many structural works are not completed yet. Further, vide email dated 30.09.2020, the respondents clearly admits that construction of flat is incomplete till date. Furthermore, the matter before the NCDRC, New Delhi case bearing no. 425 of 2020 titled as *"Hem Chand Garg versus Oasis Landmarks LLP & Anr."* was with regard to deficiency in service and they have not adjudicated the aspect of misrepresentation, land fraud, low density project, mis selling, changing builder as well as the gross violations of various sections of RERA being section 12, 14(2), 15(1), 18(1)(a) and 19(4).

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

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

I. Direct the respondent 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 complainant 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.

**C. Reply by the respondent no.1**

6. The respondents no. 1 vide reply as well as written submissions dated 07.05.2025 has contested the complaint on the following grounds: -

i. That by way of background, it is submitted that the complainant booked an apartment with Oasis Landmark LLP in its project namely "Godrej ICON" situated at Sector 88 A and 89 A, Gurgaon, Haryana vide an application form dated 26.05.2015. Pursuant to the said application, the complainant was allotted an apartment bearing no. ICONIC2501 on 25th floor, in ICONIC apartment vide an allotment letter dated 18.11.2015. It is submitted that the total sale consideration of the said unit was Rs.1,65,56,606/- (exclusive of taxes). An apartment buyer agreement was also executed between both the parties on 22.02.2016.

ii. That the complainant opted for possession linked plan and the tentative date of delivery was 48 + 6 months from the date of allotment letter dated 18.11.2015 which comes out to be 17.05.2020.

iii. That the application form (clause 13), 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. It is submitted that the clause 2.10 of the agreement clearly stipulated that in the event of non-payment of any installment by the buyer as per the schedule of payment, the developer is within its right to reject the booking

and treat amount paid towards part earnest money in view of the defaults committed by the petitioner. Further, as per clause 5.1 of the agreement, it was the obligation upon the complainant to come forward for registration of BBA and take the handover of possession after execution of conveyance deed and clear all the other charges. It is further submitted that clause 5.4 of the buyer's agreement categorically stipulated that if the buyer commit any default to comply with the obligations as set out in clause 5.1 of the agreement, the said event shall be considered buyer's event of default.

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

v. 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.

vi. That 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.

vii. 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. 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.

Thereafter, a meeting was held on 17.07.2018 where the objections from the allottees were heard at length by DTCP. Thereafter, after following due process of the law, DTCP granted approval regarding revision of the building plans on 03.10.2018.

viii. 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.

ix. That upon incorporation of the additional licensed land, the developer was entitled to additional FAR and as such the entire development of the project is carried out strictly in consonance with the sanctioned plans and approvals. As per applicable laws, the additional FAR can be utilized on the entire land for which licence is granted by DTCP. That there is no reduction of the land for ICON neither the land that was meant for ICON has been used for any other project as wrongly contended by the complainant. 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.

x. 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.

xi. That the respondent carried out the construction of the project at a considerable speed and achieved the initial construction milestones. The respondent has duly completed the construction and have obtained the occupancy certificate from DTCP dated 18.09.2020.

xii. 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.

xiii. That the complainant has no intention of taking possession of the flat on account of fall in the market prices. It is submitted that the respondent sent an email dated 15.02.2022 requesting the complainant to come forward for the registration of the unit but to no avail. Further, the respondent even issued a reminder cum deemed handover letter vide dated 22.11.2023 to the complainant. Despite the repeated reminders sent by the respondent, the complainant has chosen to ignore the same and has now filed the instant complaint based upon false and frivolous issues as an afterthought in order to conceal its own defaults.

xiv. That there is no misrepresentation or violations of any rules of RERA and as such the complaint is liable to be dismissed. The complainant wrongly alleges that the present case involves misrepresentation on the part of the appellant since the project was marketed by respondent No.2 i.e. Godrej Properties Limited. It is submitted that the said finding is completely perverse inasmuch as: i) The appellant in its contractual documents i.e. application form/allotment letter/BBA had transparently disclosed that the project is being developed by the appellant i.e. Oasis Landmark LLP; ii) The project was being developed by the appellant and Godrej Properties Limited was admittedly a partner in the said LLP vide admission deed dated 22.08.2014. It is submitted that the facts as mentioned above do not disclose any misrepresentation as defined under Section 12 of the RERA Act.

xv. That the complainant wrongly alleges that the appellant failed to obtain 2/3rd consent of the allottees before amending the building plans, in purported violation of Section 14(2)(ii) of the RERA Act. This fact is untenable for the following reasons: i) The proposed amendments were initiated by the appellant through a formal application dated 21.09.2016, which was submitted to the competent authority well prior to the coming into force of the RERA Act on 01.05.2017. The statutory requirement for obtaining 2/3rd consent was, therefore, not applicable at the relevant time. ii) The Directorate of Town and Country Planning (DTCP) conducted a meeting with allottees, heard objections, and approved the revised plans vide communication dated 03.10.2018, after following due process of law. iv) Further, the Hon'ble NCDRC while hearing a similar complaint arising out of similar project in CC/425/2020 titled *"Hemchand Garg vs Oasis Landmark LLP"* directed the promoter to only refund principal amount and

said order was upheld by the Hon'ble Supreme Court in Civil Appeal No.4088/2023.

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. Despite due service of notice through speed post as well as through email, no reply has been received from respondent no.2 and respondent no.3 with regard to the present complaint and also none has put in appearance on their behalf before the Authority. In view of the above, the respondent no.2 and 3 are hereby proceeded ex-parte.

**D. 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.

**D.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.

**D.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.

## E. Findings on the relief sought by the complainant.

### E.I Direct the respondent to refund the entire principal amount already paid to the respondents along with monthly compounded interest @ 15% per annum or as per RERA guidelines.

13. In brief, the case of the complainant is that the respondent in its brochure specifically mentioned that the project namely, "Godrej Icon" is being developed by Godrej Properties Ltd. Under this impression as also the name suggests, that the said project is a Godrej Project, the complainant invested his money in the said project. It is only upon signing the application form, he got to know that the project is being developed by M/s Oasis Landmark LLP i.e., respondent no. 1 hereinafter. On 26.05.2015, after going through brochure, he booked a residential unit bearing no. Iconic2501 on the 25th Floor in the said project. He initially paid an amount of Rs.5,00,000/- as booking amount and further made payment of 20% of the cost of the flat, without receiving an allotment letter or the BBA having been executed. Thereafter, respondent no. 1 issued an allotment letter dated 18.11.2015 to the complainant, wherein the respondent mentioned total sale consideration of booked unit as Rs.1,65,56,606/-. The buyer's agreement was executed between the parties on 22.02.2016, wherein the project land was clearly mentioned as 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.

14. Further, the respondent had 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 complainant. 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 662 to 747 (by 13% approx.) on the total project lands (of which the Godrej Icon project and Godrej Oasis were a part) and also increased the number of towers without informing the complainant. The complainant has approached this Authority seeking refund of the entire amount paid by him as he wishes to withdraw from the project.

15. The unit in question was allotted in his favour by the respondent/promoter on 18.11.2015 vide provisional allotment letter. Thereafter, the buyer's agreement executed between the parties on 22.02.2016. As per clause 4.2 of the apartment buyer's agreement executed between the parties on 22.02.2016, the possession of the booked unit was to be delivered by 18.05.2020. The occupation certificate for the tower/block in question was obtained on 18.09.2020. The complainant has surrendered his unit through legal notice dated 26.02.2024, seeking refund of the paid-up amount with interest on grounds reiterated in the present complaint.

16. The Authority observes that as per brochure at page 40 to 61 (annexure – 2) 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 complainant to book the property. It is also pertinent to mention here that logo of Godrej Properties also appears on the first page of the Buyer's agreement. By mentioning the name and logo of Godrej Properties on the brochure & BBA and the name of Godrej in the name of the project, the respondents have tried to make an impression upon the public at large that the said project is being marketed and developed by Godrej Properties. Through aforesaid false statements, the respondents influenced the allottees decision to purchase a unit in the aforesaid project.

17. 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."*

18. Accordingly, the Authority observes that the said representation of marketing the project by R2 in the brochure, BBA amounts to misrepresentation on part of respondents. Since, in the present matter, the complainant is seeking refund being affected by such incorrect, false statement contained in the advertisement or brochure, therefore the complainant is entitled for full refund along with

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

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

19. 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 has 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.

20. In view of the submissions made by the parties and facts on record as well as arguments of the respective parties, the Authority holds the respondents are 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.

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

21. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. 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.,*** 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. Therefore, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

## F. Directions of the authority

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

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

23. Complaint stand disposed of.

24. File be consigned to registry.

**(Ashok Sangwan)**
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.07.2025