

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

Complaint no. :	2088 of 2022
First date of hearing:	10.08.2022
Date of decision:	05.12.2023

1. Dr. Kanwarjit Singh Chadha
2. Dr. Daljit Chadha

R/o: F-33, Rajouri Garden, New Delhi-110027,
Delhi, India

Complainants

Versus

1. M/s Oasis Build Home Private Limited LLP
Office address: 19, Maulana Azad Society,
Parwana Road, Pitampura, New Delhi.
2. M/s Oasis Landmarks LLP
Office address: Godrej One, 5th floor, Pirojshanagar,
Eastern Express Highway, Vikhroli (East), Mumbai-
400079.
Also at: 3rd Floor, UM House, Tower A,
Plot No. 35, Gate No. 1, Sector 44, Gurugram - 122002.

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Mr. Subhash Grover (Advocate)
Mr. Kapil Madan (Advocate)

For the complainants
For the respondents

ORDER

1. The present complaint dated 06.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided 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. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	Godrej Oasis, Sector 88A, Gurugram, Haryana
2.	Project area under registration	6.8 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide 53 of 2017 dated 17.08.2017. Valid up to 30.09.2019



5.	DTPC license no. & other details	85 of 2013 dated 10.10.2013. Valid up to 09.10.2024 Licensed area 13.76 acres
6.	Apartment no.	E-0701, 7 th Floor, Tower E
7.	Unit area admeasuring	1479 sq. ft. (super area) 1045 sq. ft. (carpet area)
8.	Provisional allotment letter issued in favour of the complainants on	22.09.2014 (Page 53 of complaint)
9.	Date of apartment buyer agreement	30.04.2015 [Page 71 of complaint]
10.	Possession clause	4. COMPLETION OF CONSTRUCTION 4.2 The Developer shall endeavour to complete the construction of the Apartment within 48 months from the date of issuance of Allotment Letter, along with a grace period of 12 months over and above this 48 months period ("Tentative Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment. [Page 87 of complaint]
11.	Due date of possession	22.09.2019 Grace period is included being unconditional and unqualified.
12.	Total consideration as per BBA on page 117 of complainants	Rs. 1,15,21,700/-



13.	Total amount paid by the complainants	Rs. 1,21,41,546/- [As per SOA dated 06.08.2019 at page 167 of complaint and two receipt at page 157 and 159 of the complaint]
14.	Occupation certificate	29.03.2019 [Page 84 of reply]
15.	Offer of possession	06.08.2019 [Page 31 of reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- a. That the complainants have booked the aforesaid/unit no. E-0701 on 7th floor in Tower E, Godrej Oasis, Sector 88-A, Gurugram, measuring 1479 sq. ft. super built up area and carpet area measuring up to 1045 sq. ft. has been reserved for complainants and also confirm that the total sale consideration of said flat is Rs. 1,15,21,700/- and initially paid Rs. 6,00,000/- at the time of booking of the residential flat i.e., on dated 16.04.2014 and thereafter made payment as per demand and payment plan given by the respondents within stipulated period.
 - b. That the respondents have failed to deliver the actual physical possession of the flat, within the stipulated period. As per agreement dated 30.04.2015, the respondents ought to have handed over the physical possession of the apartment to the complainants within 48 months from the date of allotment letter

dated 22.09.2014 i.e., up to 21.09.2018, with grace period of 12 months i.e., up to 21.09.2019. But the developer offered for handing over the physical possession of the apartment only on 04.05.2021 when there was complete lockdown all over the India due to Second wave of Covid-19 Pandemic.

- c. That further, the respondents illegally claimed common area maintenance charges since 2019 up to date, when the physical possession of the flat was not handed over to them. It is pertinent to mention that the question of paying the CAM charges by the complainants does not arise. It is evident that complainants have not taken the physical possession as respondents only offered the physical possession during the peak COVID lockdown, even after being well aware that the complainants cannot travel due to lockdown on account of second wave COVID as they are senior citizen age 70+. The complainants were unable to visit the site due to COVID second wave and this situation was in very much notice and knowledge of the respondents. Even then respondents imposed frivolous formalities, in order to play bluff upon complainants and dupe complainants and extort money, meaning thereby the flat in question was not duly furnished. It was the reason respondents themselves were not ready to deliver the actual physical possession of the flat and they sent the frivolous possession letter.
- d. That the primary criterion / objective of respondents to collect the CAM (Common Area Maintenance) or CAE (Common Area Electricity) are the charges that are against the services provided by

respondents and duly received by complainants. When the complainants have not fore-mostly received the physical possession of the flat. The complainants cannot be categorized as user of the service provided by the respondents and therefore, the claim of respondents is illegal false and frivolous.

- e. That on 03.09.2019, the respondents received the cheque qua stamp duty charges of Rs. 4,01,000/- the entire balance sale consideration and other charges as on 02.09.2019. Nothing was due on part of complainants but the respondents did not execute and register the sale deed in favor of complainants despite duly receiving cheque qua the stamp duty charges as per the applicable rates by sub - registrar on dated 03.09.2019.
- f. That on 04.05.2021 i.e., the time when second wave of COVID was at the peak, the complainants received a two-line short email from the respondents that read as *"This is to bring you in notice that your unit GODOASE0701 in Godrej Oasis is ready for handover. Request you to please close the handover formalities ASAP"*.
- g. Upon interpreting the email, it is very well understood that no such due (sale consideration) was balance against the complainants at that time. Pursuing to this, the complainants sent the following reply to email on dated 05.05.2021 at 8:44 pm which is reproduce as under *"we are surprised to receive this message from you of taking the possession of our flat in time Covid pandemic when Delhi & NCR is in lockout. We being 70 plus dare not step out of our home. Please defer it till condition becomes conducive."*

- h. That to utter shock of complainants, on 14.06.2021, they received an email from respondents that read as: *"please find attachment invoice of CAM and Electricity Charges for the period 30 Sep 2020 – 30 June 2020. Please note that your advance CAM from period of 30 Sep 2019 – 30 Sep 2020 is paid. Request you to please clear your CAM ASAP."* Thereafter, the complainants sent the following email on 14.06.2021 at 2:50 pm as a reply to email, which is reproduced as under" *"you have not handed over the possession of above flat because of delay in paper work. I have contacted my relationship manager as designated from time to time and was informed about the delay. Only time I was asked to take possession of just before lockdown in March 2021. How can you send me a bill of electricity charges without giving the possession of the same."*
- i. That according to respondent's email dated 14.06.2021 nothing was due against the complainants. That is, the respondents have already received full and final sale consideration from the complainants and they have already received advance CAM as well as CAE charges, even when complainants were not liable to be pay any such charges as they have not yet received physical possession of the flat.
- j. But the respondents could not en cash the said cheque of Rs. 4,01,000/- qua stamp duty due to their fault. It is because of above mentioned reason respondents has given a voucher of Rs. 2,00,000/- to the complainants through email dated 19.10.2021 which has not yet been redeemed by respondents. Meaning thereby

the cheque amounting of Rs. 4,01,000/- and voucher amount of Rs. 2,00,000/- is still laying with the respondents but the respondents did not execute and register the sale deed in favor of complainants and the respondents did not handed over the physical possession despite receiving entire consideration, charges and cheque qua stamp duty.

- k. That the complainants again received an email dated 07.07.2021 vide which the respondents demanded the stamp duty amount of Rs. 7,02,000/- and also demanded the common area maintenance as well as common area electricity charges of Rs. 67,793/- (for the period 30.09.2020 to 30.06.2021) from the complainants.
- l. That in March 2022, it came to the knowledge of complainants that the construction raised by the respondents over the said project is very poor and there are structural cracks in the building due to poor construction and there exist higher possibility of collapse of building just like Chintal Society. Now, after finding the cracks in the buildings, the complainants have lost faith and trust upon the respondents project and management and therefore, the complainants want the refund of their amount by way of this petition.
- m. That it is pertinent to submit here that after making a huge payment of Rs.1,21,41,546/- plus TDS amounting of Rs.1,04,179/- by the complainants from their saving as mentioned in account statement dated 06.08.2019 provided by respondents. Hence, the complainants are entitled for refund of the entire amount along

with interest as per applicable norms of HARERA at such rate as may be prescribed and compensation in the manner as provided under this Act, from date of deposit till recovery, paid by the complainants against the price of the flat in the project in terms of section 18 of the Act read with section 19(4) of the Act.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s): (as per application for amendment of relief sought which was allowed by the authority vide order dated 19.09.2023)
 - a. Direct the respondents to handover the possession of the subject unit and delay possession charges at the prescribed rate for the delay caused in handing over possession as per proviso to section 18(1) of the Act.
5. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent no.1 and 2.

6. The respondent no.1 and 2 by way of written reply made the following submissions:
 - a. That the complainants have concealed the fact that the respondents offered the possession vide possession intimation letter dated 06.08.2019 and after the completion of advance period the respondents raised invoices towards common area maintenance and electricity charges for the period 30.09.2020-30.09.2021 which

are required in order to run the site operations as these charges are specifically related to site maintenance and is not linked with the possession of the apartment. It is submitted that the said fact was apprised to the complainants vide email dated 16.10.2021. However, the complainants instead of paying the said charges choose to file a frivolous complaint. In this regard, the respondents relied on order dated 12.08.2021 passed by the authority in CR/4031/2019.

- b. That the respondents already offered possession to the complainants vide possession intimation letter dated 06.08.2019 i.e. before the promised timelines. The respondents have strictly adhered to the terms and conditions of the agreement and there is no violation of any of the provision of the Act and as such the present complaint is liable to be dismissed. It is further submitted that the present complaint is wholly erroneous and misconceived.
- c. That the respondents upon receiving the occupancy certificate issued possession well within the stipulated time vide possession intimation letter dated 06.08.2019 to the complainants. However, the complainants are not interested in taking possession of the apartment despite the same being ready in all aspects on account of fall in the market value of such apartment. The Hon'ble Supreme Court in *Ireo Grace Realtech Private Ltd. Vs. Abhishek Khanna & ors. (Civil Appeal No. 5785 of 2019)* has held that the allottee is obligated to take possession even if the same has been delayed by the developer provided the construction is complete, occupancy

certificate has been received by the developer and the developer is willing to pay delayed possession charges to the allottee.

- d. That the complainants booked an apartment with the respondents in its project namely "Godrej Oasis" situated at Sector 88A and 89A, village Hasaru, Gurugram, Haryana vide an Application Form dated 25.04.2014 and paid an amount of Rs. 6,00,000/- towards the booking of the unit.
- e. That pursuant thereto the complainants were allotted an apartment no. E0701 on 7th floor in Tower E of the said project vide an allotment letter dated 22.09.2014. On 30.04.2015, the apartment buyer agreement was executed between the parties. Clause 4.2 of the said agreement signed between the parties clearly states that the apartment shall be ready for occupation within 48+12 months from the date issuance of the allotment letter dated 22.09.2014. Therefore the tentative date of offer of possession of the apartment was 22.09.2019.
- f. That clause 11 of the application form, allotment letter and builder buyer agreement (clause 2.4) inter-alia stipulated that earnest money for the purposes of the said application shall be 20% of the sale consideration of the apartment which was to ensure compliance on the part of the complainants. Clause 2.4 of the agreement clearly stipulated that the complainants shall be liable to pay interest at the rate of 15% pa on the unpaid amount computed from the due date till the date of actual payment if the complainants fails to pay any installment of the balance consideration.

- g. That Clause 2.5 of the agreement states that the respondents will be at sole discretion to terminate the apartment buyer agreement in the event of default on part of the complainants and be entitled to forfeit the earnest money out of the total amount paid by the complainants to the respondents. Clause 5.4 of the agreement provides that in the event there is the default on the part of the complainants to comply with the obligations or the complainants fails to take over the possession of the apartment within 60 days from the possession notice expiry date, the same shall be the complainant's event of default under the agreement. Further, Clause 5.4 further states that till the time the complainants does not take possession, the complainants shall pay to the respondents holding charges at the rate of Rs.5/- per month per square feet of the super built up area of the apartment per month and applicable maintenance charges towards upkeep and maintenance of the common areas and facilities for the period of such delay.
- h. That the respondents have charged CAM as per clause 7.3 of the agreement and has strictly adhered to the terms and conditions of the contract. The respondents duly completed the construction of the apartment and issued possession intimation letter to the complainants on 06.08.2019, however, the complainants are not interested in taking possession of the apartment and has opted to file this complaint which is devoid of any merits and as such should be dismissed with cost.

- i. That the respondents duly constructed the project within the agreed timelines and issued possession intimation letter dated 06.08.2019 to the customers upon receipt of the occupancy certificate of the respective tower. More than 517 families have already taken possession of their respective apartments and are enjoying the amenities constructed in the project.
 - j. That despite completing the construction and after having obtained the occupation certificate and issuing the possession letter dated 06.08.2019, the complainants have failed to take possession of the apartment and is now raising frivolous issues as an afterthought in order to shift the burden of losses upon the respondents.
 - k. That the respondents had sent several reminder letters and granted opportunities vide email dated 07.07.2021, 14.07.2021, 16.10.2021, 25.02.2022 and 22.03.2022 to come forward and remit CAM charges applicable post completion of advance common area maintenance & Electricity charges as per possession intimation letter however the complainants have failed to pay any attention to such reminders and filed the instant frivolous complaint which is devoid of any merit. As on 09.09.2022, the complainants are liable to pay a sum of Rs.1,50,249/- towards the maintenance charges. The complainants abjectly failed to clear the outstanding as stated above and have committed an "Event of default" as per the terms and conditions of the agreement.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided

based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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.

F. Findings on the relief sought by the complainants.

F.I Possession and delay possession charges

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

.Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. Clause 4.2 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"4.2. The Developer shall endeavour to complete the construction of the Apartment **within 48 months from the date of issuance of Allotment Letter, along with a grace period of 12 months** over and above this 48 months period ("Tentative Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment."*

14. **Due date of handing over possession:** As per the aforesaid clause, the respondents had agreed to deliver the possession of the subject unit within



48 months from the date of issuance of the allotment letter. In the present complaint, the allotment letter was issued on 22.09.2014. As far as grace period is concerned, the grace period is allowed being unconditional and unqualified. Therefore, the due date of handing over possession comes out to be 22.09.2019.

15. The counsel for the complainants submitted that the apartment buyer agreement was executed on 30.04.2015 and the due date as per the agreement was 22.09.2019. However, the possession of the subject unit was offered to the complainants vide letter dated 06.08.2019 after receipt of occupation certificate dated 29.03.2019. The demand raised by the respondents vide letter dated 06.08.2019 was duly paid by the complainants on 02.09.2019. The cheque on account of execution of the conveyance deed was also paid by the complainants but till date neither the possession of the subject unit has been handed over nor the conveyance deed has been executed. Thereafter, vide email dated 04.05.2021, the respondents intimated that the unit is ready for handover. However, the complainants deferred the taking over of possession vide email dated 05.05.2021 stating that the handover request has been made during the time of COVID and there is lockdown in Delhi- NCR due to second wave, hence they can't travel. Further, the respondents vide email dated 14.06.2021 and 07.07.2021 is demanding CAM and electricity charges for the period 30.09.2020 till 30.06.2021 (rectified vide present order as it has been inadvertently recorded as 30.06.2020 in proceedings dated 19.09.2023) and is also demanding increased registration charges. The complainants vide various emails intimated the respondents that the



demand on account of CAM and electricity is not payable by them as they have not taken the possession of the subject unit till date. The complainants further submitted that the complainants have made the payment on account of stamp duty amounting to Rs.4,01,000/- on 02.09.2019 and the respondents have failed to execute the conveyance deed despite receiving entire sale consideration.

16. The counsel for the respondents submitted that the complainants are liable to make payment in respect of CAM charges in view of judgment bearing no. 4031/2019 passed by the authority and in view of non-payment of the same, the respondents were not able to get the conveyance deed executed.
17. The authority observes that the due date of possession as per the apartment buyer's agreement was 22.09.2019. In the present case, the occupation certified was issued by the concerned authority on 29.03.2019 and thereafter, the possession of the subject unit was offered to the complainants on 06.08.2019. In the present case, the respondents had offered possession of the subject unit on 06.08.2019 i.e., prior to the due date of possession as per the buyer's agreement (22.09.2019). Also, it is pertinent to note that the respondents had raised the following demands along with the letter of offer of possession:

S.no.	Description	Amount demanded
1.	Total instalment amount to be paid	Rs.6,49,302/-
2.	Common Area Maintenance & Electricity Charges	Rs.92,147/-
3.	Stamp Duty	Rs.4,01,000/-

18. It is observed that the complainants made the payment of the outstanding dues as demanded by the respondents as aforesaid on 02.09.2019 by way



of three cheques. The respondents had acknowledged the payment of Rs. 6,44,315/- vide receipt dated 03.09.2019 and Rs.92,147/- also vide receipt dated 03.09.2019. However, the respondents have not encashed a cheque dated 02.09.2019 amounting to Rs.4,01,000/- towards the stamp duty till date. In this way complainants have made payment of Rs. 1,21,41,546/- against the subject unit till date.

19. Here, it is pertinent to note that despite making payment of the entire consideration as demanded by the respondents at the time of offer of possession, the respondents failed to handover the possession of the subject unit to the complainants. The complainants have fulfilled their obligation to make payment of the outstanding dues and in spite of that they were deprived of possession of the subject unit by the respondents for the reasons best known to him. There is no document on the record to corroborate as to why the possession was withheld by the respondents and was not handed over to the complainants. It is only through email dated 04.05.2021, that the respondents had intimated the complainants that the subject unit is ready for handover. The word "ready for handover" implies that the subject unit was not ready prior to the said date. The respondents remained silent for almost two years i.e., from 06.08.2019 (date of offer of possession) till 04.05.2021, despite having received full consideration including other charges demanded prior to handing over of possession. However, vide email dated 05.05.2021, the complainants declined the request made by the respondents in view of COVID-19. Despite paying the entire consideration, the respondents have failed to handover the physical possession of the subject unit to the complainants for no fault on their part.



The reasons for withholding the possession of the subject unit by the respondents are beyond the imagination of the authority.

20. Keeping in view the peculiar facts of the present matter as discussed above, the respondents are directed to handover physical possession of the unit to the complainants within a period of one month from the date of this order. Further, the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. 02.09.2019 (the date on which the entire outstanding amount was paid by the complainants upon receipt of offer of possession) till 04.05.2021 (the date on which the respondents intimated that the unit is ready for handover) plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules. It is hereby clarified that this 2 months of reasonable time is being granted to the complainant-allottees keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents.
21. Further, the benefit of six months grace period on account of Covid-19 shall be applicable to both the parties and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said COVID-19 period.
22. **Maintenance charges-** The respondents have raised an issue that the complainants have failed to make payment of Rs.1,50,249/- against the common area maintenance charges and common electricity charges. As far as issue regarding maintenance charges and electricity charges are concerned, where the said agreements have been entered into before

coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement.

23. The authority has decided the issue of maintenance charges in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGD Land Ltd.** wherein it is held that the maintenance charges are payable after issuance of offer of possession on receipt of occupation certificate plus two months which is the statutory period provided for taking possession of the subject unit by an allottee as per provisions of section 19(10) of the Act. In the present case, despite the receipt of occupation certificate, the respondent has failed to handover the possession of unit and only vide email dated 04.05.2021, the respondent has intimated the complainant that the unit is ready for handover. Keeping in view, the peculiar facts and circumstances of the present case, the respondent shall demand the maintenance charges from the complainant w.e.f. 04.07.2021 i.e., the date (04.05.2021) on which the respondents intimated that the unit is ready for handover plus 2 months. Thus, the respondents are entitled to charge maintenance charges from the complainants for the period post 04.07.2021 and not prior to that.

24. **Execution of conveyance deed-** The authority further observes that section 11 of the Act, 2016 provides certain functions and duties of the promoters and one of the same under sub clause (f) of clause (4) of section 11 provides duties of the promoters to execute a registered conveyance deed of an apartment, plot or building as the case may be in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottee's or competent authority as the case may be



as provided under section 17 of the Act. It is not in dispute that the complainants are allottees of the subject unit allotted by a promoters/builder. But despite a lapse of more than 3 years from the offer of possession after receipt of occupation certificate, the promoters/respondents have failed to execute a conveyance deed of the said unit. The title of the said unit by the complainants can only be perfected by executing a conveyance deed which is their statutory right.

25. Further, as per clause 5 of the apartment buyer agreement, the allottee is under an obligation to pay make payment of the balance sale consideration, statutory charges, stamp duty, registration charges and miscellaneous expenses for the conveyance deed. It is specifically provided in the said clause that the cost of stamp duty, registration charges, other incidental charges and expenses will be borne by the allottee in addition to the total sale consideration of the unit. It is important to note that the state government collects stamp duty to validate the registration agreement. A stamp duty is a mandatory payment and usually has to be borne by the buyer. So, as per the stipulation as agreed upon between the parties at the time of execution of apartment buyer's agreement, the complainants-allottees are liable to get the conveyance deed/ sale deed executed on payment of the requisite stamp duty charges at the rate applicable on the date of registration as per the policy of the state government. Hence, in terms of the clauses of the agreement and in view of provisions of section 11(4)(f) and section 17 of the Act, 2016, the respondents/promoters are directed to execute conveyance deed of the allotted unit in favour of the complainants within a period of one month from the date the necessary

charges such as stamp duty and registration charges etc. are deposited by the complainants with the builder.

G. Directions of the authority

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

- a. The respondents are directed to pay the interest at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainants from 02.09.2019 (the date on which the entire outstanding amount was paid by the complainants upon receipt of offer of possession) till 04.05.2021 (the date on which the respondents intimated that the unit is ready for handover) plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- b. The respondents are entitled to charge maintenance charges from the complainants for the period post 04.07.2021 and not prior to that.
- c. Further, the benefit of six months grace period on account of Covid-19 shall be applicable to both the parties and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said COVID-19 period.
- d. The respondents/promoters are directed to execute conveyance

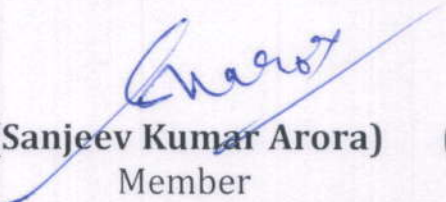


deed of the allotted unit in favour of the complainants within a period of one month from the date the necessary charges such as stamp duty and registration charges etc. are deposited by the complainants with the builder. The respondents are directed to handover physical possession of the unit to the complainants within a period of one month from the date of this order.

- e. The rate of interest chargeable from the allottees by the promoter, in case of default in making payment shall be charged at the prescribed rate i.e., 10.75 % by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- f. The respondents are not entitled to charge any amount against holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

27. The complaint stands disposed of.

28. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.12.2023