

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

Complaint no. : 5789 of 2023  
Date of complaint : 12.02.2024  
Date of order : 16.07.2025

Santosh,

**R/o:** - VPO- Daultabad, Sub-Tehsil- Kadipur, Gurugram.

**Complainant**

Versus

M/s Landmark Apartments Pvt. Ltd.

**Regd. office:** Landmark House-85, Sector-44,  
Gurugram, Haryana.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Prashant Sheoran (Advocate)

Jatin Sharma (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.



**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	Landmark – The Residency, sector – 103, Gurugram
2.	Project area	10.868 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	33 of 2011 dated 19.04.2011 valid up to 15.04.2021
5.	Name of licensee	Basic Developers Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Provisional allotment letter	31.01.2014 (Page no. 16 of complaint)
8.	Date of execution of apartment buyer agreement executed between the original allottee and promoter	31.01.2014 (page 24 of complaint)
9.	Endorsement in favour of complainant	31.01.2014 (page 19 of complaint)
10.	Unit no.	A-155, 15 <sup>th</sup> floor, Tower-A (Page no. 26 of the complaint)
11.	Unit area admeasuring	1350 sq. ft. (super area) (Page no. 26 of the complaint)
12.	Possession clause	<b>6.1 Schedule for Possession of The Said Apartment:</b> The Develop/ Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment by 07.08.2018. (page 34 of complaint)
13.	Due date of possession	07.08.2018 (as per possession clause)
14.	Unregistered agreement to sell executed between original allottee and complainant	17.04.2012 (page 51 of complaint)

15.	Total sale consideration as per BBA	NIL
16.	Amount paid to respondent/promoter	NIL
17.	Occupation certificate	25.09.2020 (as submitted by the counsel for respondent during proceedings dated 16.07.2025)
18.	Offer of possession	Not offered
19.	Maintenance demand raised by respondent from complainant against unit in question	05.07.2023 (page 59 of complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions: -
  - I. That in 2010, a collaboration agreement was executed between respondent and landowners, for the purpose of developing the project in question. In 2014, a supplementary agreement was subsequently executed in relation to the collaboration agreement dated 08.08.2010. As a result, respondent allocated several units to its collaborators, out of which the unit in question is one. That the unit in question is unit bearing number A-155 having super area of 125.418 m<sup>2</sup>, floor number 15, Tower number A, block number A, in project Landmark – The residency, situated at sector 103, Gurgaon, Haryana.
  - II. That in 2014 the unit in question was allotted to Sh. Jaiprakash by the respondent vide allotment letter dated 31.01.2014. That thereafter an apartment buyer agreement was executed between the respondent and previous allottee on 31.01.2014.
  - III. That after the execution of collaboration agreement in 2010 said Jaiprakash entered into an agreement to sell with the complainant and in terms of agreement to sell the above unit in question was re-allotted



in favour of the complainant. The allotment in favour of complainant was done by respondent by way of an endorsement on the back of allotment letter dated 31.01.2014 on the same day when the unit in question was allotted in favour of previous allottee.

- IV. That for the purpose of allotment in favour of the complainant, previous allottee also requested the respondent by way of a letter, whereby respondent specifically acknowledges and admitted that he has sold whole of his interest in the said unit for consideration, which is received by him, to Mrs. Santosh wife of Mr. Dinesh Kumar. That on the same date, i.e. 21.01.2014, the complainant also requested to respondent to transfer the allotment in her favour.
- V. That complainant had paid a valuable sale consideration for the unit in question i.e. an amount of Rs.1,23,72,891/- is duly mentioned in the agreement to sell. It is submitted that since the unit in question was transferred in favour of the complainant, thus the complainant is now lawful allottee of the unit in question and is entitled to file the present complaint before this authority and all the rights of the previous allottee was now can be exercised by complainant. It is submitted as per the terms and conditions of the apartment buyer agreement; the respondent was liable to hand over possession of the unit in question by 07.08.2018 as per clause 6.1 of the apartment buyer agreement.
- VI. That since 2018 till the date of filing of the present complaint, complainant hasn't received any letter in regard to offer of possession. Yet recently on 05.07.2023, respondent issued a letter to the complainant whereby, the respondent demanded an amount of Rs.15,63,183/-.
- VII. That since the offer of possession was never made to the complainant. Thus, there is no question arises to pay any sort of maintenance or



interest on maintenance charges. It is submitted that as per clause 6.3 of the apartment buyer agreement, it was specifically mentioned that upon receiving a written intimation from the developer in terms of clause 10.2, the intended allottee shall within a time stipulated by the developer in the notice take over the said apartment from the developer. However, in the present case the respondent never intimated or requested the complainant to take possession of the unit in question, thus the respondent cannot claim any sort of maintenance charges from the complainant.

- VIII. That the authority as well as honorable Supreme Court of India has several times ordered that the holding charges cannot be claimed by the builder. It is submitted that till date, except above stated letter respondent has not issued any letter requesting the complainant either take possession or execute any maintenance agreement with the concerned person.
- IX. That as per the apartment buyer agreement, since there is delay in handing over of possession, thus the complainant is also entitled for delayed possession charges from the respondent.
- X. That in view of the aforesaid facts, the complainant has been left with no other option but to approach this Authority for adjudication of the matter is in issue and directing respondent to withdraw its demand letter and offer the possession of the unit in question as soon as possible. Hence the complaint. The complainant reserves her right to seek compensation before appropriate forum in future.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover possession execute conveyance deed and to pay delay possession charges.



- II. Direct the respondent to stop raising any demand towards maintenance charges and to set aside illegal demand raised by the respondent.
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.
6. The respondent put in appearance through Advocate and marked attendance on 18.09.2024 and 16.04.2025. Despite specific directions for filing of reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 16.04.2025, the defence of the respondent was struck off.
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 complainant.
- E. Jurisdiction of the authority**
8. The authority has complete territorial and 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 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

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.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges.**

12. In the present complaint, the complainant intends to continue with the project and is 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 6.1 of the builder buyer's agreement dated 31.01.2014, provides for handing over of possession and is reproduced below:

**6.1 Schedule for Possession of The Said Apartment:** The Develop/ Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment by 07.08.2018.

14. The complainant has submitted that in 2010, a collaboration agreement was executed between respondent and landowners for the purpose of developing the project in question. In 2014, a supplementary agreement was subsequently executed in relation to the collaboration agreement dated 08.08.2010. As a result, respondent allocated several units to its collaborators, out of which the unit in question is one. In 2014, the unit in question was allotted to Sh. Jaiprakash by the respondent vide allotment letter dated 31.01.2014. Thereafter, an apartment buyer agreement was executed between the respondent and original allottee on 31.01.2014, which was subsequently endorsed in the name of complainant by the respondent on their joint request. It is submitted as per clause 6.1 of the apartment buyer agreement, the respondent was liable to hand over possession of the unit in question by 07.08.2018. Since 2018, till the date of filing of the present complaint, complainant hasn't received any letter in regard to offer of possession.
15. In the instant case, the unit in question was firstly allotted to Sh. Jai Prakash in terms of the collaboration agreement executed between the respondent and landowners vide allotment letter dated 31.01.2014. On the same date i.e. 31.01.2014, an apartment buyer's agreement was also executed between the original allottee i.e. landowner and the respondent for a total sale consideration of Rs.NIL and the original allottee was only liable to pay service tax, registration charges, stamp duty and maintenance charges. Thereafter, on joint request of the original allottee and the complainant, the unit in question was endorsed in name of the complainant vide endorsement dated 31.01.2014.
16. The Authority observes that proviso to Section 18(1) of the Act, 2016, provides that in case, ***the allottee does not intend to withdraw from the project, the promoter is liable to pay interest at the prescribed***

*rate on the amount paid in respect of unit* for every month of delay, till the handing over of the possession if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, in the present case, no consideration was ever paid by the complainant or original allottee to the respondent/promoter against the unit in question and the said unit was allotted to the original allottee in terms of the collaboration agreement executed between the respondent and landowners, which is a separate transaction. Accordingly, no case for delay possession charges is made out under Section 18 of the Act read with Rule 15 of Rules, 2017.

20. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The occupation certificate for the tower in question was obtained by the respondent from the competent authorities on 25.09.2020. However, possession of the subject unit has not been handed over to the complainant till date. In view of the above, the respondent/promoter is directed to handover possession of the unit to the complainant within a period of 30 days and to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within a period of three months.

**F.II Direct the respondent to stop raising any demand towards maintenance charges and to set aside illegal demand raised by the respondent.**

21. The complainant has submitted that vide letter dated 05.07.2023, the respondent is illegally raising demand towards maintenance and



holding charges from the complainant. Since the offer of possession was never made to the complainant thus, there is no question arises to pay any sort of maintenance or interest on maintenance charges. The Authority observes that although the occupation certificate for the tower in question was obtained by the respondent on 25.09.2020. However, possession of the unit has not been offered to the complainant till date. Therefore, the demand on account of maintenance charges is not justified at this stage and the same can only be demanded at the time of offer of possession of unit to the complainant. Further, the respondent is directed not to charges any amount against holding charges from the complainant/allottee 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*. In view of the above, the demand with respect to maintenance charges as well as holding charges is hereby set-aside.

**G. 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):
- No case for delay possession charges is made out under Section 18 of the Act read with Rule 15 of Rules, 2017.
  - The respondent is directed to handover possession of the unit to the complainant within a period of 30 days and to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within a period of three months.



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- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement dated 31.01.2024.
- iv. 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.

23. Complaint stands disposed of.

24. File be consigned to registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.07.2025



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