



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

Complaint no. : 6229 of 2022
Date of complaint : 15.09.2022
Date of order : 28.05.2025

Rohit Jain and Samta Jain
Both R/o: - 310/18, Esskay Villa, Civil Lines,
Gurugram, Haryana-122001.

Complainants

Versus

1. M/s Oasis Landmarks LLP
Regd. Office At: Plot No. 35, 3rd Floor,
UM House, Sector-44, Gurugram-122002.
2. M/s Oasis Buildhome Pvt. Ltd.
Regd. Office At: 19, Maulana Azad Society,
Parwana Road, Pitampura, New Delhi.

Respondents

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Vinay Yadav (Advocate)
Saurabh Gauba (Advocate)
None

Complainants
Respondent No.1
Respondent No.2

ORDER

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

A. Unit and project related details

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

S. No.	Heads	Details
1.	Project name and location	Godrej Oasis, Sector 88A and 89A, Gurugram
2.	Project area	13.76 acres
3.	Nature of project	Group Housing colony
4.	RERA registered/not registered	53 of 2017 dated 17.08.2017 valid up to 30.09.2019
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013 valid upto 09.10.2024
6.	Name of licensee	Oasis Buildhome Pvt. Ltd.
7.	Allotment letter dated	22.09.2014 (page 20 of complaint)
8.	Date of execution of buyer's agreement	16.02.2015 (page 15 of complaint)
9.	Unit no. as per the buyer's agreement	E0604, 6 th floor, Tower E (Page 20 of complaint)
10.	Unit measuring	1307 sq. ft. (carpet area) [Page 20 of complaint]
11.	Possession clause	4.2. <i>The developer shall endeavor 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-month period ("tentative completion time"). upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment."</i> (Emphasis supplied)

		[pg. 31 of complaint]
12.	Due date of possession	22.09.2019 (48 months from date of issuance of allotment i.e., 22.09.2014 + 12 months grace period is allowed being unqualified)
13.	Total consideration as per BBA on page 61 of complaint	Rs.1,44,80,000/-
14.	Total amount paid by the complainant as per SOA dated 26.11.2015 on page 66 of complaint	Rs.1,15,08,781/-
15.	Occupation certificate	29.03.2019
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That vide allotment letter dated 22.09.2014, a unit bearing no. E-604, 6th floor admeasuring super built up area of 1850 sq. ft. was allotted to the complainants in the project of the respondent named "Godrej Oasis" at Sector 88A and 89A, Gurugram. Thereafter, on 16.02.2015, an apartment buyer's agreement was executed between the parties for the said unit as per which the total sale consideration for the above-mentioned unit was Rs.1,44,80,000/- at basic sale price of Rs.6,500/- per square feet.
- II. That after the allotment and signing of apartment buyer's agreement, the complainants has approached the bank for home loan to pay the consideration amount of unit to respondents and for the same Axis bank Ltd. sanctioned the home loan of the complainants for Rs.1,00,00,000/- on the basis of apartment buyer agreement.



- III. That the complainant has made timely payments to the respondents as per the invoices raised by them. On 28.11.2015, the complainants received an invoice bearing No. GODOADE0604 dated 25.11.2015 for a sum of Rs.23,96,042/- and when the complainants got through the said invoice, they found that the respondents are raising the invoices more than of the agreed amount as per the apartment buyer agreement by adopting unfair trade practice.
- IV. That thereafter complainants approached at respondent's office and asked for the statement of account and after receiving the same the complainants came to know that respondents had raised an illegal and arbitrary demand on the basis of higher rate which was totally in contravention of agreement dated 16.02.2015.
- V. That the complainants and the respondents entered into various mail communications on subject of basic sale price of allotted unit, but on 02.12.2015 the respondents instead of accepting the terms of the signed apartment buyer's agreement, said that they have incorrectly mentioned the basic sale price as Rs.6500/- per square feet instead of Rs.7000/- per square feet.
- VI. That the complainants sent a legal notice dated 24.12.2015 to the respondents through their counsel which was duly posted on 26.12.2015 for correction of invoices and adjustment of illegal demand raised by respondents against the allotted unit.
- VII. That the complainant since then time and again had approached the respondents, but the respondents failed to adhere the genuine requests of the complainants and now they are even failed to bother towards any correspondence of the complainants and are trying to grab the hard-earned money of the complainants.



- VIII. That the complainants had earlier filed complaint before the District Consumer Dispute Redressal Forum, Gurugram in 2016 however same was withdrawn in August 2017 for want of pecuniary jurisdiction. Upon withdrawing the complaint, the respondents offered to settle the matter amicably. However, once again all the efforts of complainants went in vain and the respondents kept raising their illegal demands which were totally in contradiction with the apartment buyers agreement signed by the parties.
- IX. That as per the clause 4.2 of apartment buyer agreement, the respondents were under obligation to hand over the physical possession of the apartment within 48 months from the date of issuance of allotment letter.
- X. That after losing all the faith in credibility and genuineness of the respondents, the complainants asked for cancellation of said unit and refund of their hard-earned money.
- XI. That the respondents have clearly violated the provisions of apartment buyer's agreement firstly by raising the illegal demands of payment at a higher rate than agreed in the agreement and secondly by not offering the possession of the said unit in time. The respondents have not paid any heed to the requests of the complainants and have neither cancelled the said unit and nor refunded the hard-earned money of complainants till date.
- XII. That till date the complainants have paid Rs.1,15,08,781/- to the respondents against the allotted unit which comes to approximately 80% of the total sales consideration i.e. Rs. 1,44,80,000/-.
- XIII. That more than four years have passed since the initial request of the complainants for cancelling their unit and refunding their amount and

the respondents still fails to refund the hard-earned money of the complainants.

C. Relief sought by the complainants:

4. The complainants have previously sought refund of the paid-up amount along with interest at prescribed rate. However, on 26.04.2024, the complainants have filed an application for amendment of relief from refund to possession, execution of conveyance deed and payment of delay possession charges. Thereafter, vide proceedings dated 19.02.2025, after hearing both the parties, the application of the complainants for amendment of relief was allowed.
5. The complainants have sought following relief(s):
 - I. Direct the respondents to handover possession, execute conveyance deed of the flat, and to pay delay possession charges.

D. Reply by the respondents.

6. The respondent no.1 put in appearance through Advocate and marked attendance on 05.01.2023, 31.05.2023 and 18.10.2023. Despite specific directions for filing of reply, the respondent no.1 has failed to comply with the orders of the authority. It shows that the respondent no.1 was intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 18.10.2023, the defence of the respondent no.1 was struck off vide proceedings dated 18.10.2023. However, in the interest of justice, vide proceedings dated 16.04.2025, the respondent no.1 was given an opportunity to file written arguments within a period of 2 weeks with an advance copy to the complainant. Accordingly, the respondent has filed its written arguments dated 02.05.2025, contesting the complaint on the following grounds:

- i. That the complainant booked an apartment with the respondent in their project namely GODREJ OASIS situated at Sector 104, GURGAON,



HARYANA on 30.04.2014. It is pertinent to mention that the total price of the apartment was agreed to be Rs.1,44,80,000/-. Pursuant to the said application, the complainants were allotted an apartment bearing unit no. E-604 on the 6th floor in Tower E of the said project.

- ii. That the complainant entered into the agreement being fully aware that they shall be liable to make the payments as per the progress of construction opted by them in the builder buyer agreement. It is submitted that the Clause 4.2 categorically provided that the possession of the apartment shall be handed over within 48+12 months from the date of the allotment letter and as such the tentative date of possession comes out to be 21.09.2019.
- iii. That Clause 2.10 of the agreement categorically provided that in the case the complainant fails to make payment of the balance consideration, the same shall be buyer's event of default and the opposite party shall be entitled to forfeit the earnest money along with the other charges.
- iv. That the total consideration of the apartment was Rs.1,44,80,000/- however, the respondent vide email dated 02.12.2015 duly intimated to the complainant that there is a typo error in the rate per square feet as the correct rate per square feet is Rs.7000/- instead of Rs.6500/-. It was made clear that there was no change in the total consideration of the apartment and the demand was raised as per the payment schedule VI of the agreement. It is submitted that the complainant has paid a total sum of Rs.1,15,08,781/- to the respondent and failed to make timely payment of the balance consideration agreed between the parties. It is apposite to mention here that the complainant has defaulted on several occasions and failed to pay timely construction-linked installments post the execution of the agreement. It is



submitted that more than 278 families have already taken possession of their respective apartments and are enjoying the amenities constructed in the project.

- v. That despite completing the construction and after having obtained the occupation certificate on 29.03.2019, the complainant has failed to make the balance payments towards the total consideration and is now raising frivolous issues as an afterthought in order to shift the burden of losses upon the respondent.
- vi. That several reminders such as 16.09.2021, 20.12.2021, and 13.01.2022 were sent to the complainant to make the payment, however failed to comply with his own obligation.
- vii. That the complainant has failed to make payments towards the construction-linked invoices and as on 08.10.2024 a sum of Rs.37,47,374/- is outstanding as per the Statement of Accounts and the sum of Rs.17,42,623/- is outstanding as per the Statement of Interest.
7. Despite due service of notice through email, no reply has been received from respondent no.2 with regard to the present complaint and also none has put in appearance on its behalf before the Authority. In view of the above, the respondent no.2 is hereby proceeded ex-parte.
8. 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.

E. Jurisdiction of the authority

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 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 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.

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 complainants.

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

12. 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.""

(Emphasis supplied)

13. Clause 4.2 of the buyer's agreement dated 26.02.2015 provides the time period of handing over possession and the same is reproduced below:

4.2.

"The developer shall endeavor 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-month period ("tentative completion time"). upon the apartment being ready for possession and occupation the developer shall issue the possession notice to the buyer of the apartment."

14. As per clause 4.2 of the buyer's agreement, the possession of the unit was to be handed over within 48 months from the date of issuance of allotment letter (22.09.2014) along with a grace period of 12 months over and above this 48-month period. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter. Thus, the due date for handing over of possession comes out to be 22.09.2019.

15. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same as is being granted to the complainants in case of delayed possession charges.



20. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.2 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 22.09.2019. However, the respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Further, the authority observes that as per the DTCP website the occupation certificate for the tower in question has been granted to the respondents/promoter on 29.03.2019. However, possession of the apartment has not been offered to the complainants till date.
21. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 16.02.2015 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.09.2019 till offer of possession plus 2 months or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.
22. 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 allottees. Whereas, as per Section 19(11) of the Act of



2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question.

23. The occupation certificate for the tower in question has already been obtained by the respondent on 29.03.2019. Therefore, the respondents/promoter is directed to handover possession of the unit to the complainants and to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

G. Directions of the authority

24. 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 pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% p.a. for every month of delay from the due date of possession i.e., 22.09.2019 till offer of possession plus 2 months or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules;
 - ii. The arrears of such interest accrued from 22.09.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the Rules.

- iii. The respondents/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainants.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
 - v. The respondents/promoter is directed to handover possession of the unit to the complainants and to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months.
 - vi. The respondents/promoter shall not charge anything from the complainants which is not the part of the apartment buyer's agreement dated 16.02.2015.
 - vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
 - viii. 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.
25. Complaint stands disposed of.
26. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.05.2025