

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

**Complaint no.:** 7505 of 2022  
**Date of filing:** 09.12.2022  
**Date of order:** 11.09.2025

Rakesh Garg

**Resident of:** - 102-A, Pocket-C, Mayur Vihar, Phase-2,  
Delhi-110091.

**Complainant**

**Versus**

M/s Oasis Landmarks LLP

**Registered office at:** Godrej One, 5<sup>th</sup> Floor,  
Pirojshanagar, Eastern Express Highway,  
Vikhroli (East), Mumbai - 400079.

**Respondent No.1**

M/s Godrej Properties Limited

**Registered office at:** Godrej One, 5<sup>th</sup> Floor,  
Pirojshanagar, Eastern Express Highway, Vikhroli  
(East), Mumbai - 400079.

**Respondent No.2**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Ray Kumar Nath (Advocate)

**Complainant**

Shri Saurabh Gauba (Advocate)

**Respondents**

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

S.No.	Particulars	Details
1.	Name of the project	"Godrej Oasis", Sector-88A, Gurugram
2.	Nature of the project	Group Housing Colony
3.	DTCP license no. and validity status	85 of 2013 dated 10.10.2013 Valid up to 09.10.2024
4.	Name of licensee	M/s Oasis Buildhome Pvt. Ltd.
5.	RERA Registered/ not registered	<b>Registered</b> 53 of 2017 dated 17.08.2017 Valid up to 30.09.2019
6.	Unit no.	A-1203, 12 <sup>th</sup> Floor, Tower A (As per page no. 50 of the complaint)
7.	Unit area admeasuring	1463 sq. ft. (Super Area) (As per page no. 50 of the complaint)
8.	Allotment letter	22.09.2014 (As per page no. 50 of the complaint)
9.	Date of Execution of apartment buyer's agreement	16.01.2015 (As per page no. 56 of the complaint)
10.	Possession clause	<b>4. Completion of Construction</b>  <i>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</i>

A

		<i>possession notice to the buyer of the apartment.</i> (As per page no. 72 of the complaint)
11.	Due date of possession	<b>22.09.2019</b> (Note: Due date to be calculated 48 months from date of issuance of allotment letter i.e., 22.09.2014 plus grace period of 12 months)
12.	Total sale consideration	Rs.1,10,10,450/- (As per payment plan on page no. 53 of the complaint)
13.	Amount paid by the complainant	Rs.1,14,89,744/- (As per statement of interest on page no. 189 of the complaint)
14.	Occupation certificate /Completion certificate	01.04.2019 (As per DTCP website)
15.	Offer of possession	26.09.2019 (As per page no. 105 of the complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
  - I. That a residential apartment being flat no. A-1203, 12th floor, Tower-A, Godrej Oasis, Sector-88A, Gurugram Haryana, with a super built-up area of 1,463 square feet, along with proportionate undivided interest in common areas and facilities and exclusive right to use designated 1 open car parking space for 1 car, was purchased by the complainant on a basic sale price of Rs.1,10,10,450/- from M/s Godrej Properties Limited, in Godrej Oasis project Gurugram.
  - II. That the unit was booked vide an application form, in April 2014. However, despite the complainant having paid all the dues including the final demand email issued by the respondent dated 26.09.2019, the unit has not been handed over to the complainant to date.



- III. That the complainant applied on 25.04.2014 through an associate of M/s Godrej Properties Ltd., M/s 360 Realtors LLP, 607, Time Tower, M.G. Road, Gurgaon-122002, for provisional allotment of the unit along with the earnest money of Rs.5,00,000/- towards application amount vide cheque no. 382923 dated 25.04.2014 drawn on SBI. Further, the associate of M/s Godrej Properties Limited showed their printed brochure and detailed layout plan and it was promised to the complainant to give possession of the unit within a period of 36 months i.e., up to April 2017 along with all infrastructural and recreational facilities. It was also informed to the complainant that the project is sanctioned for providing home loans by all major banks including the SBI.
- IV. That the complainant was informed about the confirmation of allotment of the said apartment by the associate on 29.04.2014.
- V. M/s Godrej Properties Ltd. issued an allotment letter dated 12.05.2014 to the complainant mentioning confirmation of allotment of the apartment. They also issued a receipt dated 28.04.2014 against the booking of the above unit and sent the same to the complainant along with their letter dated 12.05.2014 which for all practical purposes is the allotment letter for the unit.
- VI. Further, the balance earnest money of 20% of BSP as per demand letters was also deposited by the complainant in time on 27.05.2014 and 28.06.2014 respectively.
- VII. That the complainant applied for the home loan from the State Bank of India for the above property on 10.09.2014, however, various formalities and documents of the project were still not provided by the respondent by that time, and due to that the loan could be sanctioned by only March 2015 after providing necessary documents by the respondent to the bank.
- VIII. That another letter dated 22.09.2014 was issued by M/s Godrej Properties Ltd. in favour of the complainant informing thereby the decision to undertake the development of the project through newly incorporated Oasis Landmarks

LLP having Godrej Properties Limited as its managing partner enclosing therewith another allotment letter dated 22.09.2014 issued by M/s Oasis Landmarks LLP assigning code to the complainant as GODOASA1203. Further, the apartment buyer's agreement was made available to the complainant in March, 2015. As per clause 4.2 of ABA, the project's completion was now shown in the agreement as 48 months from the date of the allotment letter along with a grace period of 12 months.

- IX. That payment demand notice against the start of excavation i.e., the first milestone was sent by M/s Oasis Landmarks LLP on 18.11.2014 directing to pay Rs.9,86,211/- till 06.12.2014 which could be paid on 17.03.2015 after sanctioning of the loan of Rs.82,50,000/-by State Bank of India. Subsequent instalments were paid by the complainant in time as per the demand letters. However, after receipt of the 95% payment on 05.05.2016, there was no communication from the side of the respondent despite the repeated requests made by the complainant for information on the status of the project.
- X. That, the complainant received an e-mail dated 26.09.2019 after five and a half years of booking for completion of all payments with regard to the unit. Further, the email stated that the respondent shall intimate the complainant regarding physical possession of the unit. he said offer, inter-alia, provided a statement of the balance amount to be paid by the complainant including interest on delayed payment amounting to Rs.95,264.86. That the remaining amount indicated in the said communication be paid within 30 days i.e., before 26.10.2019, and possession of the allotted apartment be taken thereafter within 30 days of the cut-off date of payment. However, the said email did not declare any compensation for the delay in handing over of possession as per the agreed terms and conditions which should also have been calculated due to the delay in possession. Further, the apartment was allegedly not ready till the date of issue of the said email which is clear from the correspondence

made. It is a matter of record by the respondent's own admission, that the alleged completion certificate from the Authority was not received by the date, thus delaying the alleged completion of the unit. In any event, the fact remains the stipulation laid down by the respondent's own terms and conditions were not alleged claims of completion but rather actual handing over of possession.

- XI. That the prima facie inconsistencies on the part of the respondent, the complainant acted immediately and went ahead and paid the demanded amount as per the email for final demand on 22.10.2019 through RTGS.
- XII. That the complainant, as advised by the concerned person of the respondent, requested the respondent formally vide e-mail dated 22.10.2019 to waive off the interest charges on delayed payments due to delay in the release of payment by SBI on account of non-fulfilling formalities by the respondent. The same was confirmed as waived off by the respondent vide mail dated 21.01.2020 and it was also intimated that the date of handing over of the unit shall be intimated to the complainant in due course.
- XIII. The complainant contacted several times with the designated relationship managers and other persons but no proper response regarding possession of the flat was given by the respondent. Further, the complainant sent a detailed mail on 19.11.2020 to the available mail ID narrating all incidents and subsequently tried several times to get the e-mail address of the chairman or some senior officer and to intimate the date of the registry but the same remained unheard and not intimated by the concerned persons.
- XIV. That the complainant requested the respondent to intimate the probable date of possession to plan accordingly but the same was not intimated clearly by the respondent rather the respondent took excuses for one or another reason to delay the physical possession of the unit to the complainant. The respondent vide mail dated 14.02.2018 demanded form 16B from the complainant which was provided by the complainant vide mail dated

15.02.2018 with the clarification that it was already provided by the complainant long back. The receipt of the same was acknowledged by the respondent vide mail dated 15.02.2018. Yet again the same was demanded by the respondent from the complainant vide mail dated 10.07.2019 and then again vide mail dated 11.11.2019 which was again provided by the complainant vide mail dated 05.03.2020. The receipt of the same was again acknowledged by the respondent vide mail dated 12.03.2020.

- XV. That the complainant sent an e-mail to the respondent complaining about non-response from the relationship manager regarding handing over of the flat. In response to this, the respondent again asked for some more TDS certificates vide mail dated 25.02.2021 which even contained the wrong dates of certificates, however, the same was provided by the complainant promptly on 27.02.2021 despite having provided earlier at the time of payment which are reflected in their account statement also. Due to vigorous pursuance by the complainant, the respondent instead of providing possession of the flat again demanded some more old TDS certificates vide mail dated 28.03.2021 which were not provided by the complainant and denied vide mail dated 01.04.2021 that he had already submitted all the TDS certificates immediately after the deposit of the same and the same was reflected in the received payments on the respondent's portal, yet again vide mail 03.04.2021 and 13.04.2021 the respondent kept demanding the copy of TDS. It is clear that the demands for these documents were merely delaying tactics by the respondent to delay the possession of the complainant's dwelling unit.
- XVI. The complainant also collected a "No objection certificate" from SBI, a lender on 11.03.2021 as per the demand of the respondent, and the same was sent to the respondent to give possession of the flat and for signing the lease deed.
- XVII. Meanwhile the complainant received a mail dated 14.06.2021 for payment of common area maintenance charges for the period commencing from

27.10.2020 till 30.10.2021. As per the email correspondence, the respondent stated that since the advance CAM payment had exhausted on 26.10.2020, i.e., one year from the date of the offer of possession, the complainant was now liable to make the CAM payments. However, since the possession of the unit was still not handed over to the complainant, the complainant sent a mail on 15.06.2021 and requested for the possession to be handed over without which CAM demands were not justified. However, to the surprise of the complainant, the respondent then sent a mail on 16.08.2021 asking for a payment of Rs.72,500/- towards the interest amount which as per them was outstanding and overdue and needs to be paid by the complainant before taking possession. That this interest amount of Rs.72,500/- had already been waived off by the respondent as stated above. Therefore, the respondent has been trying to delay the possession handover of the unit to the complainant for reasons best known to them. It was further mentioned in the e-mail that the possession of the flat will be aligned within 5-7 days of the remittance of the payment.

XVIII. That vide email dated 19.04.2022, the respondents once again approached the complainant for handing over possession of the unit on the condition that the complainant makes a payment of Rs.1,24,105/- dues with respect to CAM charges for the period 27.10.2020 till 18.02.2022. However, this was unjustified since the complainant has not to date received the possession of the unit and has not been able to enjoy the property for reasons attributable to the respondent, hence, the possession should not be made conditional upon the payment of the said CAM dues. In fact, the complainant has been trying to get in touch with the respondent but again to no avail and hence has a last resort approached this Authority for resolutions of his issues.

XIX. That the respondent that despite every single stipulation, condition, requirement, mandate, and demand being duly met by the complainant, the

fact of the matter still remains that neither has the apartment allotted to the complainant is completed nor has the possession of the allotted apartment been handed over to the complainant.

- XX. That 95% of the purchase price was paid during the course of the first two years. The agreement did not stipulate that the respondent would pay any interest on the amount which had already been received. Delays on the part of the respondent in handing over possession postpone the date on which purchasers will obtain a home. Besides servicing the loan, the complainant has to finance the expenses of living elsewhere.
- XXI. Since the flat is not available for possession and there is undue delay, the respondent has violated the provisions of the Real Estate (Regulation and Development) Act, 2016, the complainant is entitled to compensation for the delay in handing over of possession of the apartment in terms of section 18 of the Act, 2016 read with Rule 15 of the Rules 2017. Besides, the complainant reserves his rights to claim adequate compensation for the actual loss suffered by him and also the compensation for mental agony and harassment due to the non-performance of the contract by the respondent.
- C. **Relief sought by the complainant: -**
4. The complainant has sought following relief(s):
- I. To order the respondent to provide physical possession of the unit to the complainant, unconditionally and on an immediate basis without demanding the alleged CAM charges for the period during which the complainant did not have possession of the Unit due to reasons attributable to the respondent;
  - II. To order the respondent to pay an amount of about Rs.60,31,587/- as Interest for the delay in handing over possession of the apartment in terms of clause 4.3 of the buyer's agreement along with the interest at the rate of 15% p.a. (cl. 2.4 and 2.10 of the agreement) for the period between 12.05.19 and the date of actual handing over of possession as per the calculations given hereunder till 21.11.22: -  
From 12.05.19-21.10.19 on Rs.1,08,60,730/- @15% = Rs.7,23,325/-  
From 22.10.19-21.11.22 on Rs.1,14,89,744/- @15%= Rs53,08,262/.

- III. To order the respondent to pay an amount of Rs 2,00,000/ towards the litigation charges and expenses incurred by the complainant towards communications made by the complainant and personal visits made to Godrej Properties and other several officials since 2018 for getting possession of the unit.
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 Authority issued a notice dated 13.12.2022 of the complaint to the respondents by speed post and also on the given email address at [noticeoasis@godrejproperties.com](mailto:noticeoasis@godrejproperties.com), [secretarial@godrejproperties.com](mailto:secretarial@godrejproperties.com) for putting in appearance and for filing reply within 30 days. However, after giving ample opportunities on 11.04.2023, 18.07.2023 and 17.08.2023, no reply has been filed by the respondents till date and the respondents were directed to file reply within the stipulated period. The counsel for the respondents appeared on 21.09.2023. It shows that the respondents were intentionally delaying the proceedings by avoiding filing of written reply even after wait of 10 months. Therefore, in view of above, vide order dated 17.08.2023, the defence of the respondent was struck off.
- D. Written submission by the respondents**
7. The respondents are contesting the complaint on the following grounds: -
- i. That the present complaint merits dismissal at the threshold since there is no violation whatsoever of any of the provisions of the Real Estate (Regulation and Development) Act, 2016.
  - ii. That the complainant booked an apartment with the respondent in its project namely "Godrej Oasis" situated at Sector 88A and 89A, Village Hasaru, Gurugram, Haryana vide an application form dated 26.10.2014 and thereafter apartment bearing no. A1203 on the 12<sup>th</sup> Floor in "Godrej Oasis" was allotted vide Allotment Letter dated 22.09.2014.

- iii. That on 16.01.2015, the apartment buyer agreement was executed between the parties.
- iv. That the application form /BBA clearly stipulated and defined the booking amount to be 20% of the sale consideration ("Earnest Money") which was meant to ensure performance, compliance and fulfillment of obligations and responsibilities of the complainant. That the 20% earnest money was a genuine pre-estimate of damages and was not in the nature of penalty.
- v. That the complainant from the inception, knew that the timely payments is the essence of the agreement. That as per clause 4.2 of the agreement, it was mutually agreed that the tentative date of possession shall be (48+12) months from the date of the allotment letter which comes out to be September 2019.
- vi. That the respondent duly completed the construction of the apartment and duly obtained an occupancy certificate dated 29.03.2019. Upon receipt of the occupation certificate, the respondent duly offered the possession within the promised timelines on 26.09.2019.
- vii. That the complainant, instead of coming forward and making the payment of balance consideration in terms of the agreement and taking the possession, filed a frivolous complaint seeking delay possession charges despite the fact that there was no delay on the part of the respondent in offer of possession.
- viii. That the opposite party duly constructed the project within the agreed timelines and issued a possession intimation letter dated 26.09.2019 to the complainant upon receipt of the occupancy certificate of the respective tower.
- ix. That more than 517 families have already taken possession of their respective apartments and are enjoying the amenities constructed in the project.
- x. That the respondent duly achieved all the construction-related milestones in a timely manner and accordingly issued invoices as per the payment schedule agreed to in the application form and the apartment buyer's agreement.

- xi. That bare perusal of the instant complaint would reveal that the complainant was aggrieved by non-payment of delay compensation for the offer of possession and as such was not coming forward to make the payment of stamp duty and take possession of the apartment. Thereafter, filed the complaint seeking delayed possession charges alleging delay on the part of the respondent in offering possession.
- xii. That the allegation levelled by the complainant are prima facie incorrect in as much the respondent had obtained occupation certificate on March 2019 and offered possession on September 2019 i.e., within the promised timelines however the complainant instant of making payments as per the possession intimation letter started rising demands for payment of delay compensation and other frivolous issues as an afterthought.
- xiii. That the Authority while dealing with the identical facts in the same project in "*Complaint no.3184 of 2021 titled Virendra Kumar vs Oasis Landmark LLP*" observed that since the apartment was offered for possession within the promised timelines, the complainant is not entitled for compensation and rejected the prayer of DPC.
- xiv. That the complainant wrongfully submits that the allotment letter was issued on 12.05.2019, however the allotment letter was issued only on 22.09.2019 and the same is duly annexed with the complaint (@page no.50 of complaint). In view of the above, it is categorically clear that the only intent of the complainant is to somehow show any delay on the part of the respondent when there exist none and mislead the Authority in order to demand unjustified amounts from the respondent.
- xv. That the complainant has miserably failed to perform its part of the obligation in as much as the complainant has failed to take possession of the apartment and have committed an event of default as contemplated clause 5.4 of the apartment buyer's agreement.

- xvi. That the complainant, after going through and understanding the payments schedule incorporated under the agreement, executed the same with his own will and due consent. That the complainant in terms of clause 7.3 has acknowledged that it shall be liable to pay common area maintenance charges as may be levied by the respondent.
- xvii. That the OPs had sent several reminder letters and granted opportunities to come forward and remit stamp duty and CAM charges applicable post-completion of advance common area maintenance & electricity charges as per possession intimation letter. That till date the complainant has not paid stamp duty despite several request on the part of the respondent.
- xviii. That the complainant has concealed the fact that the opposite party offered the complainant possession vide possession intimation letter and after the completion of advance period the opposite party raised invoices towards common area maintenance and electricity charges 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.
- xix. In view of the above, it is more than evident that the complainant who has committed a default and is now mischievously seeking delay possession charges. That the complainant has only concocted a fictitious story in order to avoid timely payments and accrued interest on delayed payments. It is upon the lawful demand of stamp duty and maintenance charges that the complainant filed the present complaint out of spite and without having any reasonable ground.
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**

9. 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**

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.

**E.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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



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

**F.I Direct the respondents to provide physical possession of the unit to the complainant, unconditionally and on an immediate basis without demanding the alleged CAM charges for the period during which the complainant did not have possession of the unit due to reasons attributable to the respondents;**

**F.II Direct the respondents to pay interest for the delay in handing over possession of the apartment in terms of clause 4.3 of the buyer's agreement along with the interest at the rate of 15% p.a. (cl. 2.4 and 2.10 of the agreement) for the period between 12.05.2019 and the date of actual handing over of possession.**

13. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
14. On 29.04.2014, the complainant (Rakesh Garg) along with his wife (Alka Garg) applied for a residential apartment with the respondents and paid an amount of Rs.5,00,000/- as booking amount. Thereafter vide an allotment letter dated 22.09.2014, they were allotted a unit bearing no. A-1203, 12<sup>th</sup> floor in Tower-A having super area 1463 sq. ft. in project "Godrej Oasis" of the respondents. The buyer's agreement was executed between the complainant, his wife (Alka Garg) being co-allottee and respondent no.1 on 16.01.2015 for total sale consideration of Rs.1,10,10,450/- against which the complainant has paid an amount of Rs.1,14,89,744/- till October, 2019. Subsequently, on 23.02.2016, the respondents upon joint request dated 04.02.2016 made by both allottees w.r.t surrender of the rights of co-allottee (Alka Garg) in favour of complainant (Rakesh Garg) and for the deletion of her name from the unit no. A-1203 in project "Godrej Oasis", the respondents effected the transfer of the entire share in the said unit in favour of the complainant (i.e., Rakesh Garg).
15. 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. Section 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 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."

16. Clause 4.2 of the apartment buyer's agreement dated 16.01.2015 (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-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."*

17. **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 allotment letter. In the present complaint, the allotment letter was issued by the respondent no.1 on 22.09.2014. As far as grace period of 12 months is concerned, the grace period is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes to be 22.09.2019.
18. However, the possession of the subject unit was offered to the complainant vide offer of possession letter dated 26.09.2019 i.e., after receipt of occupation certificate dated 01.04.2019. The demand raised by the respondents vide letter dated 26.09.2019 was duly paid by the complainant on 22.10.2019 including CAM charges of Rs.75,615/- and common electricity charges of Rs.15,538/- for the period 27.10.2019 to 26.10.2020, except interest on account of delayed payment and stamp duty charges. Even after paid more than sale consideration till October, 2019, and communication through email as well as telephonically, the respondents, neither handed over the physical possession of the subject unit nor executed the conveyance deed in favor of the complainant. The counsel for the respondent submits that the complainant was liable to make payment on account of interest upon delay in making timely payment as further demanded

on 16.08.2021, CAM charges and stamp duty charges and in view of non-payment of the same, the respondents were not able to handover the possession and to get the conveyance deed executed.

19. **Validity of offer of possession:** In the present complaint, the complainant has paid an amount of Rs.1,14,89,744/- against the total sale consideration of Rs.1,10,10,450/- and the respondents have offered the possession of allotted unit on 26.09.2019 after obtaining the occupation certificate from the competent authority on 01.04.2019. Thereafter, the complainant has sent an email to the respondent on 22.10.2019 and 18.01.2020 respectively with regard to waiver of interest on account of delayed payment, and thereafter, the respondents vide email dated 21.01.2020, waived off the interest amounting to Rs.95,265/- and it is further stated in the said email that "*we are in process to intimate handover of your unit and update you accordingly with dates*". Subsequent to this, the complainant vides several emails dated 18.01.2020, 19.11.2020, 02.01.2021, 15.06.2021 & 17.08.2021 requested the respondents to provide the date for handing over of physical possession of the allotted unit to him.
20. The Authority relying upon the email dated 21.01.2020 observes that the respondent/promoter despite receipt of occupation certificate did not intend to handover the physical possession of the allotted unit to the complainant/allottee as in the email dated 21.01.2020, the respondent stated that it is in process to intimate handover the physical possession of the subject unit to the complainant and update with the dates accordingly. In view of the above, the said offer of possession dated 26.09.2019 cannot be considered as valid offer of possession in the eyes of law. As mere offer of possession of the unit has no meaning and serves no purpose, if actual possession of the unit cannot be handed over.
21. Here, it is pertinent to note that despite making payment of the entire sale consideration and CAM charges from 27.10.2019 to 26.10.2020 as demanded by the respondents at the time of offer of possession except stamp duty, the

respondents failed to handover the possession of the subject unit to the complainant. The complainant has fulfilled his obligation to make payment of the outstanding dues and despite that he was deprived of possession of the subject unit by the respondents for the reason best known to them. 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 complainant.

22. It is evident that vide email dated 19.04.2022, the respondent sent an updated statement of account and intimated the complainant with respect to documents required for taking the physical possession of the allotted unit either by himself or power of attorney holder or any authorized person appointed by him. The respondent remained silent for almost 2 years i.e., from 21.01.2020 (i.e., email w.r.t providing and intimating the dates for handover accordingly) till 19.04.2022, despite having received full consideration including other charges demanded prior to handing over of possession.
23. Keeping in view the peculiar facts of the present matter as discussed above, the complainant is entitled to delay possession charges at prescribed rate of interest @10.85% per annum w.e.f. due date of possession i.e., 22.09.2019 till 19.04.2022 (the date on which the respondents intimated the complainant to take physical possession of the unit) as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules.
24. Another issue arose before the Authority is that after issuance of letter/ mail for handing over the possession, the respondents vide email dated 15.07.2024, asked the complainant, that the CAM charges and Holding charges are as due and payable, which must be paid in order to proceed with registration of the said Apartment.
25. **Maintenance Charges:** The respondents have raised an issue that the complainant has failed to make payment of Rs.3,34,255/- against the common area maintenance charges and common electricity charges. As far as issued

regarding maintenance charges and electricity charges are concerned, where the said agreement have been entered into before coming into force the Act, the matter is to be dealt with as per provisions of the builder buyer's agreement.

26. In the present complaint, the respondent has obtained the occupation certificate on 01.04.2019 from the competent authority. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 7.3, that the maintenance charges as may be determined and fixed by the respondent would be liable to be paid by the allottee.
27. Keeping in view of the above facts, the Authority deems fit that the respondent is right in demanding advance maintenance charges at pro-rata basis.
28. **Holding charges:** The respondents have raised an issue that the complainants have failed to make payment of Rs.3,45,792/- against the holding charges demanded vide email dated 15.07.2024. As far as issued regarding is concerned it was held by the *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020*, the respondents are not entitled to claim holding charges from the complainant at any point of time even after being part of the builder buyer agreement.
29. 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. As occupation certificate of the unit has been obtained from the competent authority on 01.04.2019, therefore, there is no reason to withhold the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondents to execute the conveyance deed in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

**F.III Direct the respondents to pay an amount of Rs.2,00,000/- to the complainants as litigation charges and expenses incurred by the complainant towards communications made by the complainant and personal visits made to Godrej Properties and other several officials since 2018 for getting possession of the unit.**

30. The complainant is also seeking relief w.r.t litigation charges. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (supra)*, has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**G. Directions of the authority**

31. 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):
- The respondents/promoter are directed to pay delay interest to the complainant/alloottee against the paid-up amount of Rs.1,14,89,744/- at the prescribed rate i.e., @ 10.85% per annum for every month of delay from due date of possession i.e., 22.09.2019 till 19.04.2022 (the date on which the respondents intimated the complainant to take physical possession of the unit) as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the

complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- ii. The respondents/promoter are directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days upon payment of requisite stamp duty and administrative charges by the complainant.
  - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
  - iv. The respondents shall not charge anything from the complainant-allottee which is not the part of agreed payment plan or the builder buyer agreement dated 16.01.2015. The respondents are not entitled to charge any amount against holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
32. Complaint as well as applications, if any, stand disposed off accordingly.
33. Files be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2025