

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

Complaint no. : 4090 of 2024
Date of complaint : 28.08.2024
Date of order : 01.10.2025

SKAI Auto Pvt. Ltd.,
Having Office At: - 670, Sector 15, Part 2, Gurugram.

Complainant

Versus

Oasis Landmarks LLP
Having Regd. Office At: 3rd Floor, UM House, Tower
A, Plot No. 35, Sector 44, Gurugram-122002.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Harshit Batra (Advocate)
Saurabh Gauba (Advocate)

Complainant
Respondent

ORDER

1. This 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 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. No.	Heads	Details
1.	Project name and location	Godrej Icon, Sector 88A and 89A, Gurugram
2.	Project area	5.98 acres
3.	Nature of project	Group Housing Project
4.	RERA registered/not registered	Registered vide 50 of 2017 dated 12.08.2017 valid upto 31.12.2020
5.	DTPC license no. & validity status	85 of 2013 dated 10.10.2013
6.	Allotment letter dated	28.10.2015 (Page 24 of complaint)
7.	Date of execution of buyer's agreement	17.12.2015 (page 35 of complaint)
8.	Unit no. as per allotment letter	ICONIC0703, 7 th floor, Tower- ICONIC (Page 39 of complaint)
9.	Unit measuring	1637 sq. ft. (carpet area) [Page 39 of complaint]
10.	Possession clause	4.2. The Developer shall endeavor to complete the construction of the Apartment within 48 months (for Iconic tower's apartments)/ 46 months (for other tower's apartments) from the date of issuance of Allotment Letter, along with a grace period of 6 months over and above this 48-month period ("Tentative Completion Time"). (page 52 of complaint)
11.	Due date of delivery of possession as per clause 4.2 of the said agreement i.e., 48 months from the date of issuance of allotment letter along with grace period of 6 month over and above this period	28.04.2020 (Grace period is allowed as the same is unqualified)

12.	Total consideration as per schedule VI on page 86 of complaint	Rs.1,88,92,128/-
13.	Total amount paid by the complainant	Rs.2,08,36,696/- (as per SOA at page 138 of complaint)
14.	Endorsement form	31.08.2018 (page 27 of complaint)
15.	Occupation certificate	18.09.2020 (Page 44 of reply)
16.	Possession Intimation letter	30.10.2020 (page 91 of complaint)
17.	Reminders email	22.12.2020, 23.01.2021, 10.05.2021 (page 140-145 of reply)
18.	Pre-termination email	25.05.2021 (page 146 of reply)
19.	Termination	26.08.2021 (150 of reply)
20.	Amount received by respondent termination by post	16.09.2021, 08.02.2022, 08.03.2022, 30.06.2022 (page 138 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the original allottees, Mrs. Kalpana Minda and Mr. Kartik Minda were allotted an apartment bearing no. ICONIC0703 7th Floor, admeasuring 1637 sq. fts. of carpet area or 2317 sq. ft. of super built-up area in the project of the respondent named Godrej Icon situated at Sector 88A & 89A, Gurugram vide allotment letter dated 28.10.2015. Thereafter, the original allottees and respondent executed builder buyer agreement on 17.12.2015.
- II. That the unit was transferred in the name of the complainant vide endorsement form dated 31.08.2018.
- III. That clause 4.2 of the BBA clearly stipulates that the possession of the apartment was to be delivered within 48 months from the date of

allotment letter i.e., 28.10.2015 with a grace period of 6 months. Thus, the due date possession including the grace period comes out to be 28.04.2020.

- IV. That it was only on 20.10.2020, the respondent offered possession after a delay of 6 months from the due date of possession. The respondent failed to provide any delay compensation to the complainant despite there being a delay in the offer of the same.
- V. That the complainant chose a flexi possession linked payment plan as laid out in schedule VII annexed with the BBA. The total sale consideration of the unit is Rs.1,88,92,128/- and the original allottees had paid Rs.41,66,398/- (inclusive of the credit note) till the date of transfer i.e., 24.05.2018. That the same is evident vide statement of account dated 26.07.2024 sent by the respondent.
- VI. That the complainant, including the previous allottees have made timely payments as and when demanded by the respondent. The payment made by the original allottees was transferred in the name of the complainant, that however, the amount of TDS already paid by the original allottees in favour of the respondent, was not being transferred.
- VII. That the complainant has paid the entire amount called for by the respondent and even to the excess. The complainant has also made the payment of the TDS in favour of the respondent and has made the payment of Rs.2,08,36,696/- which is Rs.1,63,384.56/- more from the amount called for till date.
- VIII. That the respondent also vide email dated 30.08.2021 gave a detailed note of the demands raised and it is imperative to note that the complainant has made timely payments as and when demanded by the respondent.

- IX. That further the previous allottees had also made payment towards the TDS of Rs.19,683 and Rs.17,868/- towards the unit. This amount is neither refunded nor adjusted towards the payment. The respondent is additionally in receipt of the excess amount of Rs.37,551/-. Thus, the even after complete the payment of the unit is made yet till date the complainant has not received possession.
- X. That the complainant requested the respondent to handover the possession of the unit, but has refused to give the possession on account of non-payment of holding charges. The complainant personally visited the respondent on multiple occasions for handing over of the possession, but was turned away on the pretext of the payment of maintenance charges and holding charges. It is pertinent to note that till date the complainant is not handed over the possession of the unit and no maintenance charges are payable on behalf of the complainant. Any charges of the maintenance are liable to be paid only after the possession is handed over to the complainant.
- XI. That the respondent is liable to illegally charging various charges such as external electrification charges of Rs.2,31,700/-, power backup facility charges of Rs.2,45,000/-, open car parking charges of Rs.7,50,000/-, wherein no demarcation of how much money is charged for which parking is defined and administrative/legal fee of Rs.50,000/-, however, the administrative charges are capped at maximum of Rs.15,000/- for a unit.
- XII. That at the time of booking, the respondent assured the complainant about the best quality of the work. At present, the entire walls of the apartment have cracks and seepage and the unit is not in a habitable condition. The respondent is obligated to provide the unit in a

habitable and liveable condition including providing all the amenities as promised.

- XIII. That the due date of the possession by 28.04.2020, however, till date the possession has not been delivered. The respondent along with offer of possession raised illegal demand and has still continued to hold back the possession for illegal demand of holding charges and maintenance.
- XIV. That despite the payment the respondent malafidely cancelled the unit of the complainant on 26.08.2021. However, the complainant had time and again went to the office of the respondent challenging the said alleged termination. Thereafter, the respondent coerced the complainant to make further payments, upon which, the alleged termination was recalled/set aside,
- XV. That the complainant has made every bonafide effort to make timely and complete payment towards the allotment. The respondent wilful and deliberate negligence has till date not given the possession of the unit. Thus, the delay is continuing till date. That being aggrieved by the unlawful, and arbitrary conduct of the respondent, the complainants have filed the present complaint.
- XVI. That the respondent vide email dated 08.05.2024 has specifically demanded the complainant to clear maintenance and holding charges as a pre-condition for proceeding with handover and registration of subject unit. The said communication unequivocally establishes that the subject unit has not been terminated nor cancelled and continues to subsist in the name of the complainant.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondents to handover possession of the unit in habitable condition, execute conveyance deed of the flat, and to pay delay possession charges.
- II. Direct the respondent to not to raise any illegal demand of external electrification charges, power back-up facility charges, open car parking charges and administrative charges and refund such amount already paid.
- III. Direct the respondent to recall illegal demand of holding charges and maintenance.
- IV. Direct the respondent to refund the TDS amount paid of Rs.37,551/-.

D. Reply by the respondents.

5. The respondent has contested the complaint on the following grounds:
 - i. That the complainant after going through and understanding the terms and conditions incorporated under the agreement duly executed the same. It is not out of place to mention that clause 4.2 of the agreement categorically provided that the tentative due date of possession shall be 28.04.2020, subject to force majeure condition wherein the respondent shall be entitled for extension of time on account of force majeure events. It is submitted that the respondent has completed the project with basic amenities within the promised timelines and duly obtained the occupancy certificate on 18.09.2020. Pursuant thereof, the respondent had issued the possession intimation letter dated 30.10.2020 and requested the complainant to clear the outstanding dues as enumerated under the possession letter.
 - ii. That minor delay in the completion of the project was occasioned due to the force majeure arising out of the Covid 19 pandemic. In view of the above, it is categorically clear that no delay can be attributed to the respondent in the offer of possession.
 - iii. That the complainant has concealed the material facts that the opposite party offered the complainant possession on October 2020 ✓

and requested the complainant to clear the CAM charges for one year, which are payable in terms of clause 7.3 of the agreement vide invoice dated 30.10.2020 payable by 18.11.2020.

- iv. That the possession intimation letter dated October 2020 categorically provided that the respondent shall hand over the possession after the Complainant makes payments of all the requisite dues within 18 days from the date of offer of possession. The complainant has failed to clear the outstanding towards the advance maintenance charges as per clause 7.3 r/w clause 5.3 of the agreement and such committed material event of default. Further, clause 14 of the agreement clearly states that the complainant shall be liable to make payment of stamp duty as and when demanded by the respondent. The respondent vide possession intimation letter informed the complainant to make payment of the stamp duty amounting to Rs.8,11,000/-. Clause 5.1 r/w clause 5.3 of the agreement clearly states that the complainant shall be entitled to clear due intimated alongwith the possession intimation letter including the stamp duty within a period of 60 days from the date of offer of possession failing which the respondent shall be entitled to terminate the apartment and forfeit the earnest money in terms of the agreement.
- v. That the complainant has alleged that the respondent cannot charge electrification charges and other charges from the allottees while issuing offer of possession letter. It is submitted that the external electrification charges and power backup charges form a part of the 'cost of property' and the same is clearly captured in Schedule VI of the agreement.
- vi. That clause 2.4 of the agreement also reserves the respondent's right to terminate the agreement in the event of default on part of the

complainant to the respondent and also reserves the right to forfeit the earnest money out of the total amount paid by the complainant to the respondent till that date. Clause 5.4 of the agreement clearly provided that in the event there is default on the part of the complainant to comply with the obligations or the complainant 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 and the complainant shall pay to the respondent 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.

- vii. That despite completing the construction and after having obtained the occupation certificate and issuing the possession letter dated 30.10.2020, the complainant has failed to clear its outstanding dues within stipulated timeline and is now raising frivolous issues as an afterthought in order to shift the burden of losses upon the respondent, on its own account.
- viii. That the respondent has sent multiple reminders and granted opportunities vide emails dated 22.12.2020, 23.01.2021, 10.05.2021, 25.05.2021, apart from the possession intimation letter dated 30.10.2020, to come forward and clear its payment obligations as per the payment schedule mutually agreed upon by the parties under the agreement, however, the complainant has failed to pay attention to such reminders and has filed this instant frivolous complaint.
- ix. That prior to the email dated 26.08.2021, whereunder the allotment of the unit was cancelled on account of breach of the terms and conditions of the agreement as per clause 5.4 r/w clause 8 of the

agreement, the respondent duly intimated the complainant about the consequences that shall fall upon the complainant if the payment schedule is not complied with by it.

- x. That after several unsuccessful requests, the respondent vide email dated 25.05.2021, sent the last and final reminder to the complainant as a penultimate attempt to request the complainant to come forward and meet its part of the contractual obligations, to which the complainant expressed no response. Consequentially, the respondent was constrained to terminate the allotment made in favour of the complainant vide email dated 26.08.2021. Since the complainant has been unable to meet his contractual obligations, the said amount is liable to be forfeited as per the terms of the application form/allotment letter as there was no default on part of the respondent.
6. 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

7. 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

8. 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.

9. 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.1 Direct the respondent to handover possession of the unit in habitable condition, execute conveyance deed of the flat and to pay delay possession charges.

10. 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."

(Emphasis supplied)

11. Clause 4.2 of the buyer's agreement dated 17.12.2015 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 (for Iconic tower's apartments)/ 46 months (for other tower's apartments) from the date of issuance of Allotment Letter, along with a grace period of 6 months over and above this 48-month period ("Tentative Completion Time").

12. 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 (28.10.2015) along with a grace period of 6 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 6 months to the promoter. Thus, the due date of possession comes out to be 28.04.2020. The respondent has taken a plea that the construction at the project site was delayed due to Covid-19 outbreak. The Authority observes that in the instant complaint, grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent.
13. **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.

14. 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.

15. 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., 01.10.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

16. 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;"*

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same as is being granted to the complainant in case of delay possession charges.

18. In the instant case, original allottees, Mrs. Kalpana Minda and Mr. Kartik Minda were allotted an apartment bearing no. ICONIC0703 7th Floor, admeasuring 1637 sq. fts. of carpet area or 2317 sq. ft. of super built-up area in the project of the respondent named Godrej Icon situated at Sector 88A & 89A, Gurugram vide allotment letter dated 28.10.2015. Thereafter, the original allottees and respondent executed builder buyer agreement on 17.12.2015. Subsequently, the unit was transferred in the name of the complainant vide endorsement form dated 31.08.2018. The due date of possession was 28.04.2020. The occupation certificate for the tower in question has been obtained by the respondent on 18.09.2020 and possession of the unit was offered to the complainant vide possession intimation letter dated 30.10.2020. The respondent has contended that post offer of possession, several reminders through email dated 22.12.2020, 23.01.2021, 10.05.2021 were sent to the complainant for taking possession of the apartment after payment of outstanding dues, but the same having no positive results, ultimately led to cancellation of the allotment vide termination letter dated 26.08.2021. However, the Authority observes that post cancellation of the allotment on 26.08.2021, the respondent has received substantial amount from the complainant on 16.09.2021, 08.02.2022, 08.03.2022 and 30.06.2022 as evident from the statement of account dated 26.07.2024 annexed with the complaint (page 138 of complaint). Further, the respondent vide email dated 08.05.2024 has specifically demanded the complainant to clear maintenance and holding charges for proceeding with handing over and registration of subject apartment. Thus, the Authority is satisfied that the apartment in question still subsists in the name of the complainant.

19. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondent is 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 28.04.2020. The occupation certificate for the tower in question was obtained by the respondent from the competent authority on 18.09.2020 and possession of the apartment was offered to the complainant vide possession intimation letter dated 30.10.2020. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.12.2015 to hand over the possession within the stipulated period. Further, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delay possession charges shall be payable w.e.f. due date of handing over possession.
20. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 18.09.2020. The respondent offered the possession of the apartment in question to the complainant only on 30.10.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months time from the date of offer of possession.



These 2 months of reasonable time is ought to be given to the complainant keeping in mind that even after intimation of possession practically the complainant has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (30.10.2020) which comes out to be 30.12.2020.

21. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of interest i.e., 10.85% p.a. w.e.f. 28.04.2020 till the expiry of 2 months from the date of offer of possession (30.10.2020) which comes out to be 30.12.2020 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.
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 allottee. 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.
23. The occupation certificate for the tower in question has already been obtained by the respondent on 18.09.2020. Therefore, the respondent is directed to handover possession of the apartment in question to the complainant and to get the conveyance deed of the allotted unit executed in its 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.

F. II Direct the respondent to not to raise any illegal demand of external electrification charges, power back-up facility charges, open car parking charges and administrative charges and refund such amount already paid.

24. **Electrification Charges:** - This issue has already been dealt by the Authority in complaint bearing no. **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein** it is held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

Power Back-up Charges: - The Authority observes that when a person purchases a unit, he presupposes provision of all basic services like drinking water, drainage, sewerage system, electricity supply, road, street light system etc. and providing of such services is necessary for making a unit habitable and ready for possession to the allottee. Further, as per Section 19(2) of the Act, 2016, the promoter is obligated to provide provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. Unless and until the building has the electricity which also includes the power back up system, the same cannot be said to be fit for occupation. Therefore, if these facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads is not justifiable for these reasons as well.

Open Car Parking Charges: The complainant has submitted that the respondent has illegally charged an amount of Rs.7,50,000/- from it on account of open car parking charges from it. However, the Authority observes that vide buyer's agreement dated 17.12.2015, it was

specifically agreed between the parties that the complainant shall have exclusive right to use designated 0 open and 2 covered car parking space in the project for which it has charged an amount of Rs.7,50,000/- from the complainant as mentioned in Schedule VI of the agreement. The Authority is of the view that the respondent can charge amount only on account of covered car parking from the complainant subject to furnishing proof with regard to covered parking space allocated to it, if any, but the respondent cannot be sold/charge any amount on account of open parking spaces since it is the part of basic sale price charged against the unit in question as a part of common areas.

Administrative Charges: The Authority observes that administrative charges of upto Rs.15000/- can be charged by the respondent-promoter for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.

25. In view of the above, the respondent is directed to comply with the above findings and shall refund the amount collected, if any from the complainant.

F.III Direct the respondent to recall illegal demand of holding charges and maintenance.

26. The Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 18.09.2020, whereas possession of the unit was offered to the complainant only on 30.10.2020. Therefore, the demand on account of maintenance charges can only be demanded by the respondent at the time of offer of possession of unit to the complainant and not before. Further, the respondent cannot not to charge any amount against holding charges from the complainant 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 holding charges is hereby set-aside. However, the respondent can charge maintenance charges at the agreed rate from the complainant, from the date of offer of possession i.e. 30.10.2020.

- F.IV Direct the respondent to refund the TDS amount paid of Rs.37,551/-**
27. The complainant has submitted that the original allottees had made payment towards the TDS of Rs.19,683 and Rs.17,868/- towards the unit. This amount is neither refunded nor adjusted towards the payment. However, the Authority is of view that the claim with respect to refund of the said amount paid by the original allottee cannot be claimed by the subsequent allottee/complainant as there is no infringement of any of its right by the respondent. In view of the above, the said relief is declined.

G. Directions of the authority

28. 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 respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% p.a. for every month of delay from the due date of possession i.e., 28.04.2020 till the expiry of 2 months from the date of offer of possession (30.10.2020) i.e., upto 30.12.2020 only;
 - The respondent 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 complainant.



- iii. The complainant is 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.
- iv. The respondent is directed to handover possession of the unit to the complainant and to get the conveyance deed of the allotted unit executed in its 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.
- v. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement dated 17.12.2015.
- vi. The respondent shall not charge any amount on account of electrification charges, power back-up charges, open parking charges and holding charges from the complainant and shall refund the amount collected, if any from the complainant on account of said charges. Further, the respondent can charge maintenance charges at the agreed rate from the complainant, from the date of offer of possession i.e. 30.10.2020 and administrative charges of upto Rs.15000/- can be charged by the respondent.
- vii. 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 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.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.10.2025



HARERA
GURUGRAM