

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

Complaint no. : 42 of 2025
Date of complaint : 23.01.2025
Date of order : 09.12.2025

Vikrant Sharma and Ishita Sharma.,

Both R/o: - J-3, J-1, DLF City, Phase 2,
Sector 25, Gurugram.

Complainants

Versus

M/s Oasis Landmarks LLP

Having Regd. Office At: Godrej One, 5th Floor,
Pirojshanagar, Eastern Express Highway, Vikhroli
(East), Mumbai-400079.

Respondent

CORAM:

Arun Kumar

Chairman

Phool Singh Saini

Member

APPEARANCE:

Harsh Rathi (Advocate)

Complainants

Kapil Madan (Advocate)

Respondent

ORDER

1. This complaint has been filed by the complainants/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 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 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	16.11.2015 (Page 33 of reply)
7.	Date of execution of buyer's agreement	19.02.2016 (page 18 of complaint)
8.	Unit no.	D0001, Ground floor, Tower- D (Page 22 of complaint)
9.	Unit measuring	1575 sq. ft. (carpet area) [Page 22 of complaint]
10.	Possession clause	4.2. <i>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").</i> (page 34 of complaint)
11.	Due date of delivery of possession as per clause 4.2 of the said agreement i.e., 46 months from the date of issuance of allotment letter	16.05.2020 (Grace period is allowed as the same is unqualified)

	along with grace period of 6 month over and above this period	
12.	Total consideration as per schedule VI on page 66 of complaint	Rs.1,12,44,800/-
13.	Total amount paid by the complainant	Rs.1,16,80,171/- (as admitted by the respondent at page 12 of reply)
14.	Occupation certificate	18.09.2020 (page 26 of reply)
15.	Possession intimation letter	30.10.2020 (Page 29 of reply)
16.	Reminder cum deemed handover	22.11.2023 (page 70 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted an apartment bearing no. D0001 admeasuring 1113 sq. ft. approx. (carpet area) on Ground Floor in Tower D in project of the respondent named 'Godrej Icon" located at Sector-88A & 89A, Gurugram vide allotment letter dated 16.05.2015. Thereafter, an apartment buyer's agreement dated 19.02.2016 was executed between the parties for an agreed cost of Rs.1,12,44,800/- against which the complainants have paid a sum of Rs.1,16,80,171/- to the respondent till November 2020.
- II. That as per clause 4.2 of the ABA, the respondent was under obligation to hand over physical possession of the allotted apartment within 48 months plus six month's grace period from the date of allotment letter.
- III. That the respondent was unable to fulfill the conditions of the said ABA and failed to deliver the possession within agreed period. The respondent vide its letter dated 30.10.2020 intimated the

complainants to take the possession of their unit and clear some dues which were duly cleared by them.

- IV. That on one pretext or other the respondent has delayed the actual handing over of the allotted flat to the complainants. Not only this but the complainants have also paid the maintenance amount on the demand raised by the respondent without getting physical possession of allotted flat from it.
- V. That the complainants have regularly visited the respondent's office with request to give them physical possession of apartment to them but all in vain.
- VI. That after visit of the complainant to their allotted flat on 17.10.2024, the respondent has raised illegal demand of Rs.4,39,535/- to the complainants, on account of holding charges. That the respondent has committed willful default in giving actual physical possession of habitable allotted apartment to the complainants as agreed by them and raised such demand illegally which the complainants are not under liability to pay.
- VII. That the respondent has miserably failed to honor their contractual/statutory commitment to hand over physical possession of the allotted plot to the complainants within the specified period as per the terms and conditions of agreement executed.
- VIII. That the complainants through their advocate served a notice dated 22.11.2024 to the respondent, which was delivered to the respondent, requesting the respondent to handover the physical possession of apartment and pay sum of Rs.60,00,000/- on account of compensation for delayed possession to the complainants and withdraw their illegal demand of Rs.4,39,535/- against the complainants, on account of holding charges. However, the respondent has remained failed to

handover the possession of the apartment and/or to pay the compensation for delayed possession till date.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to handover possession of the apartment and to pay delay possession charges.
 - II. Declare the demand raised by the respondent on account of holding charges as null and void.
- D. Reply by the respondent.**
 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 16.05.2020, 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 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.

- iv. 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.
- v. That the respondent has sent demand letters and granted opportunities to the complainants to come forward for handing over of possession and remit the holding charges applicable on intimation of possession, however, the complainant has failed to pay attention to such demands and has filed this instant frivolous complaint.
- vi. That clause 5.4 r/w clause 8 of the agreement, clearly stated that the respondent will be at sole discretion to terminate the buyer's agreement in the event of default on part of the complainant and be entitled to forfeit the earnest money out of the total amount of the total amount paid by the complainant to 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

7. 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

8. 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

9. 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.

10. 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 of the apartment and to pay delay possession charges.

11. 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)

12. Clause 4.2 of the buyer's agreement dated 19.02.2016 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").

13. As per clause 4.2 of the buyer's agreement, the possession of the apartment in question was to be handed over within 46 months from the date of issuance of allotment letter (16.11.2015) along with a grace period of 6 months over and above this 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 16.05.2020. 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.

14. 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.

15. 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.

16. 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., 09.12.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

17. The definition of term 'interest' as defined under Section 2(za) 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;"*

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same as is being granted to the complainants in case of delay possession charges.
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 16.05.2020. 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 19.02.2016 to hand over the possession within the stipulated period.

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 complainants only on 30.10.2020, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants 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 complainants keeping in mind that even after intimation of possession practically the complainants have 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 complainants are entitled to delay possession charges at prescribed rate of interest i.e., 10.85% p.a. w.e.f. 16.05.2020 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 handover possession and 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. 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 complainants 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 Declare the demand raised by the respondent on account of holding charges as null and void.

23. The Authority observes that the respondent cannot not to charge any amount against holding charges from the complainants 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.

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 respondent is directed to pay interest to the complainants 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., 16.05.2020 till the expiry of 2 months from the date of offer of possession (30.10.2020) i.e., upto 30.12.2020 only, as per

provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act;

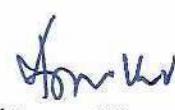
- ii. The respondent is directed to handover possession of the unit to the complainants and to get the conveyance deed of the allotted unit executed in their favour in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months.
- iii. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement dated 19.02.2016.
- iv. The respondent shall not charge any amount on account of holding charges from the complainants.
- v. 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.
- vi. 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.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025