

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

Complaint no. :	727 of 2020
Date of filing complaint:	28.02.2020
First date of hearing:	16.04.2020
Date of decision :	12.05.2022

1. Mrs. Navita Yadav W/o Mr. Vijay Kumar Singh 2. Mr. Vijay Kumar Singh S/o Mr. Ramnath Singh Both R/o: LIG 421, Sector-6 C, Swarnjayanti Vihar, Koyla Nagar, Kanpur 208007, Uttar Pradesh	Complainants
Versus	
M/s Ocean Seven Buildtech Private Limited R/o: Second Floor, Tilak Bhawan, Tilak Marg, Jaipur- 302001 Also, at: 505-506, 5th Floor, Tower B-4 Spaze I-Tech Park, Sohna Road, Gurgaon 122018	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Jeet Kumar (Advocate)	Complainants
None	Respondent

EX PARTE ORDER

- The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate

(Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Expressway Towers", Sec 109, Gurugram
2.	Project area	7.5 acres
3.	Nature of the project	Affordable Housing Project
4.	DTCP License	6 of 2016 dated 16.06.2016 and valid up to 15.06.2021
5.	Name of the licensee	Shree Bhagwan
6.	RERA Registered/ not registered	Registered under HARERA, Panchkula 301 of 2017 dated 13.10.2017
	RERA Registration valid up to	12.10.2021
7.	Unit no.	1703,17th floor, Tower 3 [Annexure V at page no. 58 of the complaint]



8.	Unit measuring (carpet area)	645 sq. ft. [Annexure V at page no. 58 of the complaint]
9.	Date of allotment	20.05.2017 [Annexure III at page no. 48 of the complaint]
10.	Date of execution of builder buyer agreement	08.06.2017 [Annexure V at page no. 56 of the complaint]
11.	Approval of building plans	26.09.2016 [As per the details available on the website of DTCP]
12.	Environmental clearance	The details have not been provided
13.	Possession clause	<p>As per clause 5.2 of BBA is reproduced as below:</p> <p>The company shall sincerely endeavour to complete the construction and the offer of possession of the said unit within 5 years from the date of the receiving of license.</p> <p>But this clause of possession is contradictory to Section 1 (iv) of Affordable housing policy 2013 which provides as under:</p> <p>Section 1 (iv)</p> <p>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project.</p> <p>Thus, in case of affordable</p>

		housing project, the possession clause given under the Affordable housing policy 2013 would prevail.
14.	Due date of possession	26.09.2020 [Calculated from the date of approval of building plans]
15.	Total sale consideration	Rs.26,29,500/- [Annexure V at page no. 61 of the complaint]
16.	Total amount paid by the complainants	Rs. 6,57,375/- [Annexure IX at page no. 99 of the complaint] The complainant has contended in his complaint at page 18 that the respondent has refunded a sum of Rs.3,42,761/- on 04.01.2020 after a period of 5 months from submission of refund application dated 29.07.2019
17.	Surrender of the unit	29.07.2019 [Annexure XV at page no. 109 of the complaint]
18.	Payment plan	Possession linked payment plan [Page 89 of the complaint]
19.	Occupation Certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint:

- That the complainants named above applied for booking of a 2BHK flat vide application no. 3183 dated 26.10.2016 in category-1 in the said residential project along with booking amount / application fee of Rs. 1,31,475/- submitted vide cheque No. 000009 dated 27.10.2016 drawn on the HDFC bank in favour of

“Ocean Seven Buildtech Pvt. Ltd.” being 5% of total sale consideration of Rs. 26,29,500/-.

4. That pursuant to draw conducted by respondent on 19.05.2017, the complainants were declared successful and were intimated by the respondent vide allotment letter dated 20.05.2017 bearing customer code OSB/ET/2BC1/739 for allotment of unit/flat No. 1703, in tower-3, 17th floor, measuring 645 sq. ft. carpet area and 99 sq. ft balcony area in Expressway Towers, Sector 109, Gurugram 122001, Haryana.
5. Subsequently, a buyer’s agreement was executed on 08.06.2017 between the parties setting out the terms and conditions for construction, allotment, possession, registration, payment schedule etc. for the allotted flat.
6. That in terms of application for booking of flat and payment schedule / plan as set out in Annexure-B of the said buyer’s agreement, the complainants had paid a sum of Rs. 6,57,375/- to respondent on different dates.
7. On 06.06.2017, a tripartite agreement was executed between the parties and State Bank of India, wherein the later agreed to disburse home loan of Rs. 23,66,000/- to finance the purchase of the allotted flat.
8. That the respondent issued a demand letter dated 23.10.2017 to complainants demanding the third instalment (being 12.5% of total sale consideration along with GST and interest of Rs. 4,538/-) amounting to Rs. 3,72,668/- even though the same was not due at

- all in terms of payment schedule as the construction was not completed up to plinth level at that time.
9. In reply to the above demand letter dated 23.10.2017, the complainants wrote an email on 10.11.2017 to respondent informing that as per payment schedule, third instalment was not due and it should not have issued demand letter and charged interest on the amount, as the construction was not completed up to plinth level. The complainants had also sent the pictures of site showing the actual position of construction of the said residential project as attachments to the email dated 10.11.2017 to respondent.
 10. In reply to complainants' email dated 10.11.2019, they received an email from respondent wherein it was confirmed that they may ignore the interest part and it was also stated that the respondent has construction linked payment agreement with SBI and SBI would disburse loan number of clients as per the payment schedule only. Hence, the complainants need not worry on that account at all.
 11. That the respondent issued another demand letter dated 12.04.2018 to complainants demanding the third instalment together with fourth instalment amounting to Rs. 7,09,966/- even though the same were not due at all in terms of payment schedule as the construction was not completed even up to plinth level at that time. That the respondent issued another demand letter dated 03.05.2019 to complainants demanding the (i) third instalment (ii) fourth instalment, (iii) fifth instalment, and (iv)

sixth instalment amounting to Rs. 13,96,924/- even though the same were not due at all in terms of payment schedule as the construction was not completed even up to plinth level at that time.

12. In reply to the above demand letter dated 03.05.2019, the complainants wrote an email on 04.07.2019 to respondent informing that as per payment schedule, no instalments were due and the respondent should not have issued demand letters, as the construction is not completed even up to plinth level. the complainants had also sent the pictures of site showing the actual position of construction of the said residential project as attachments to the email dated 04.07.2019 to respondent.
13. Accordingly, the complainants approached the State Bank of India and obtained its NOC for cancellation of the allotted flat. Thereafter, on 29.07.2019, the complainants submitted an application for cancellation of the booking of the allotted flat to the respondent along with the requisite documents and requested to refund the entire money paid by the complainants.
14. Thereafter, various follow up emails were sent by the complainants to the respondent for processing the refund application and telephonic discussions with the dealing persons to expedite the refund process, but no refund received till the date of filing this complaint.
15. During meetings and discussions with the dealing person at the office of respondent, it was informed to the complainants that the respondent would charge interest for all instalments for which

demand letters were issued by it and deduct the total interest amount and other cancellation charges including GST. Even the instalments were not due at the time of issuance of demand letters as well as at the time of submission of application for refund, as per the payment schedule and the complainants were / are not at fault at any time.

16. Thereafter, a legal notice dated 18.10.2019 was sent on behalf of complainants to respondent to expedite the refund process and release the payment without charging interest. It is pertinent to mention that thereafter various follow up calls and email were sent by complainants to respondent to expedite the refund process and provide the time frame for refund, but no reply was received from respondent.
17. That the respondent has refunded a sum Rs. 3,42,761/- on 04.01.2020 after a period of five months from submission of refund application dated 29.07.2019 against the total amount of Rs.6,57,375/- as was due for refund without any justifiable reason.
18. Thereafter, the complainant made several requests vide emails dated 14.01.2020, 16.01.2020, 21.01.2020, 24.01.2020 and 27.01.2020 asking for clarifications and refund for balance amount of Rs.3,14,614/- at the earliest but without any positive response leading to filling of the complaint.

C. Relief sought by the complainants:

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

- i. Direct the respondent to refund a sum of Rs.3,14,614/- being the balance amount out of the total amount paid by the complainants and the interest for every month of delay in refund at the rate of SBI highest marginal cost of lending rates plus 2% up to the date of refunding the money paid by them.
 - ii. Direct the respondent to pay legal expenses of Rs.50,000/- incurred towards legal fees and expenses.
20. The respondent neither put in appearance through its counsel nor filed any written reply despite giving several opportunities. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

D. I Territorial jurisdiction

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.

D. II Subject matter jurisdiction

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)(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.

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.

E. Entitlement of the complainants for refund:

E.1 Direct the respondent to refund a sum of Rs.3,14,614/- being the balance amount out of the total amount paid by the complainants and the interest for every month of delay in refund at the rate of SBI highest marginal cost of lending rates plus 2% up to the date of refunding the money paid by the complainants.

Vide letter dated 20.05.2017, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 26,29,500/-. A flat buyer's agreement dated 08.06.2017 was executed between the parties. The due date of

possession of the subject unit was fixed to be within 5 years from the date of the receiving of license. But this clause of possession is contrary to Section 1 (iv) of Affordable housing policy 2013 which provides a period of 4 years for offering possession of an allotted unit either 4 years from the date of sanctions of building plans or environmental clearance whichever is later. No details of the project are available either on the website of the project or with the planning branch of the authority. So, in this case due date for possession of the allotted unit is being taken from the date of sanctions of the building plans which comes out to be 26.09.2020.

After signing of flat buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs. 6,57,375/- up to Feb 2015 as is evident from demand letter dated 12.04.2018 at page 99 of the complaint. The complainants stopped making remaining amount due by sending an email and demand letters dated 23.10.2017, 12.04.2018 and 03.05.2019, respectively. It is also contended that the respondent received a letter of surrender of the subject unit from the complainants on 29.07.2019.

The authority observes that the complainants have surrendered the unit allotted to them on 29.07.2019 and the same is evident from page no. 109 of complaint. Therefore, the respondent was supposed to return the amount of the complainants as per section 5(iii)h of Policy. But it is observed that the respondent has returned an amount of Rs. 3,14,614/- and failed to return the balance amount till date. The respondent is directed to return the

balance amount to the complainants as per section 5(iii)h of Policy of 2013 after deducting a sum of Rs.25,000/- within 30 days of date of this order with an interest @ 9.40% from date of such surrender till date of realization of amount. Clause 5(iii) (h) of the policy is reproduced below:

In clause no. 5 (Allotment Rates; Allotment & Eligibility Criteria), of the Annexure A of notification dated 19th August 2013: -

a. In clause 5(iii)h of policy dated 19.08.2013, the words "In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer", shall be substituted as under :- "On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Up to 1 year from the date of commencement of the project:	1% of the cost of flat;
(cc)	Up to 2 years from the date of commencement of the project:	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;

E.2 Legal expenses:

21. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate

complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the balance amount i.e. Rs. 3,14,614/- received by it from the complainants after deducting a sum of Rs.25,000/- as per section 5(iii)h of Policy within 30 days of date of this order with an interest @ 9.40% from date of such surrender till date of realization of amount.

23. Complaint stands disposed of.

24. File be consigned to the Registry.

V.I- 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.05.2022


(Dr. KK Khandelwal)

Chairman