

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

Complaint no. : 4086 of 2020
First date of hearing: 14.01.2021
Date of decision : 13.12.2022

Rajni Kukreja
R/o: - Gali no. 11, Madanpuri,
Gurugram, Haryana

Complainant

Versus

M/s Ocean Seven Buildtech Pvt. Ltd.
Regd. office at: 505-506, tower B-4,
Spaze I-Tech Park, Sohna Road, Gurugram,
Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Gaurav Bhayana
None

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. The present complaint dated 09.11.2020 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 as provided 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 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. N.	Particulars	Details
1.	Name of the project	"Expressway Towers", Sector 109, Gurugram
2.	Nature of the project	Affordable Housing
3.	DTCP license no. and validity status	06 of 2016 dated 16.06.2016
4.	RERA Registered/ not registered	301 of 2017 dated 13.10.2017 valid upto 12.10.2021
5.	Allotment Letter	N/A
6.	Unit no.	1401, 14th floor, Tower 3 (Page 25 of complaint)
7.	Unit area admeasuring	644 sq. ft. (Page 25 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	17.06.2017 (Page 23 of complaint)
9.	Possession clause	5.2 Possession Time The Company shall sincerely endeavor to complete construction of the said unit within 5 years from the date of receiving of licence (commitment period) subject to force majeure clause of this Agreement and timely payment of installments by the Allottees). However company completes the construction prior to the period of 5 years the Allottee shall not raise an in taking the possession after payment of remaining sale price and other charges stipulated in the to Sell. The Company on obtaining certificate for occupation

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		and use by the Competent Authority hand over the said unit to the Allottee for his/her/their occupation and use, subject to the All complied with all the terms and conditions of the said Policy and Agreement to Sell and payment per Payment Plan
10.	Possession clause in Affordable Housing Policy	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of 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 the policy.
11.	Date of environmental clearance	30.11.2017 (As per project details)
12.	Date of sanction of building plan	26.09.2016 (As per project details)
13.	Due date of possession	30.11.2021 (Calculated as 4 years from date of environmental clearance as the same is later)
14.	Total sale consideration	Rs. 26,26,000/- (As per BBA on page 28 of complaint)
15.	Amount paid by the complainant	Rs. 6,56,500/- (Page 4 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. That the respondent launched an affordable housing project under the name and style of "Expressway Towers" located in Sector 109, Gurugram, Haryana.
4. That based on the assurance of timely delivery and premium quality they have agreed to book/purchase a flat admeasuring 644 sq. ft. in the project at the rate of Rs. 4,000/- per sq. ft. The booking was done on 28.10.2016 by paying an amount of Rs.



1,31,300/- vide cheque bearing no. 000031. Further, an amount of Rs. 5,25,000/- was paid by the complainant to the respondent on 01.07.2017 vide cheque bearing no. 455611.

5. Thereafter, a buyer's agreement was executed inter se the parties on 17.06.2017. According to clause 5.2 of the said agreement, the construction of the said unit was to be completed within 5 years from the date of receiving of licence (commitment period).
6. The complainant thereafter applied for home loan through State Bank of India which was validly sanctioned by the bank vide letter dated 19.07.2019. That before disbursal of the amount, the officials of the bank did a spot survey to understand the status of construction so that disbursal of amount can be done. The officials of the bank thus visited the construction site on 23.07.2019 wherein it was concluded that only ground floor work has started till that date. However, by this time, the builder was required to complete the structure work of the tower as the due date of possession was only 28.10.2020.
7. The complainant thus wrote email dated 31.07.2019 to the respondent to discuss the issue with them but to no avail. The complainant repeatedly tried to contact the respondent regarding the status of construction of the project, but all her requests were ignored. Due to non-submission of any tri-

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partite agreement and slow progress of construction, the sanction letter given by the bank expired and thus, no amount was disbursed by the bank solely because of the fault of the complainant.

8. That the respondent, then, sent a demand letter for payment of an amount of Rs. 20,58,126/- by 19.05.2020. - was demanded on account of the booking made by the complainant. Upon receipt of the demand letter, the complainant again requested the respondent to not send unnecessary and illogical demands but the respondent sent a notice for non-payment of dues when the dues could not be cleared because of fault on their part.
9. That tired of respondent's tactics the complainant sent a legal notice to the respondent to settle the issues, to sign the tripartite agreement and to not raise illogical demands. However, the respondent never replied to the legal notice and thus, the complainant decided to file the present complaint.
10. That the facts and circumstances of the present case clearly makes out a case where the respondent has blatantly failed to perform its obligation to give position in terms of the commercial premises buyers agreement and hence in the present scenario complaint is filed under section 31 of the Haryana Real Estate Regulation and Development Act 2016.

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C. Relief sought by the complainant:

11. The complainant has sought following relief:

- i. Direct the respondents to pay interest for each month of delay
- ii. Direct the respondent to cooperate with the complainant in getting the home loan sanctioned again and sign the tripartite agreement between the bank, complainant and the respondent so that the home loan be disbursed.
- iii. To stay the operation of demand letter with due date of 19.05.2020 and waiving the penalty of Rs. 2,14,950/- imposed by the respondent on the complainant.
- iv. Compensation for mental agony.

12. The authority issued a notice dated 12.12.2020 of the complaint to the respondent by speed post and also on the given email address at corporate@osbgroup.co.in. The delivery reports have been placed in the file. Despite service of notice, the respondents have preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.

13. 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 based on these undisputed documents and submission made by the complainant.

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D. Jurisdiction of the authority

14. The plea of respondent regarding lack of jurisdiction of Authority stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

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:

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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 complainants at a later stage.

E. Findings on the relief sought by the complainant

E.I. Direct the respondents to pay interest for each month of delay

15. In the present complaint, the complainants 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."

16. Clause 5.2 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"5.2 Possession Time

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The Company shall sincerely endeavor to complete construction of the said unit within 5 years from the date of receiving of license (commitment period) subject to force majeure clause of this Agreement and timely payment of installments by the Allottees). However, company completes the construction prior to the period of 5 years the Allottee shall not raise an in taking the possession after payment of remaining sale price and other charges stipulated in the to Sell. The Company on obtaining certificate for occupation and use by the Competent Authority hand over the said unit to the Allottee for his/her/their occupation and use, subject to the All complied with all the terms and conditions of the said Policy and Agreement to Sell and payment per Payment Plan."

17. The authority has gone through the possession clause of the agreement and observed that the same is not in accordance with the date of completion stipulated in the Affordable Housing Policy, 2013. Clause 1(iv) of Affordable Housing Policy, 2013 stipulates that

*"All such projects shall be required to be necessarily completed within **4 years from the date of 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 the policy".*

The Policy prevails over any agreement executed inter se the parties and thus, the due date of possession is to be calculated in accordance with the Policy. In the present case, date of approval of environment clearance has been given as 30.11.2017. Whereas, the date of sanction of building plan is 26.09.2016. The due date of possession is calculated from the date of sanction of environmental clearance i.e.; 30.11.2017, being later which comes out to be 30.11.2021.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.

19. 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.
20. 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., 13.12.2022 is @8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
21. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to

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the rate of interest which the promoter shall be liable to pay the allottees, 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;”*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plan or from the date of environment clearance, whichever is later.

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The due date of possession is calculated from the date of environmental clearance approval i.e., 30.11.2017, being later which comes out to be 30.11.2021

24. Section 19(10) of the Act obligates the allottees 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 is yet not obtained before the due date of possession. The respondent shall offer the possession of the unit in question to the complainants after obtaining occupation certificate, so it can be said that the complainants shall come 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. This 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he 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 i.e., 30.11.2021 till the expiry of 2 months from the date of offer of possession.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the Affordable Housing Policy, 2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate



contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.11.2021 till the date of offer of possession plus 2 months, at prescribed rate i.e., 10.35 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

E.II. Direct the respondent to cooperate with the complainant in getting the home loan sanctioned again and sign the tripartite agreement between the bank, complainant and the respondent so that the home loan be disbursed.

26. The respondent is directed to cooperate with the complainant and execute tripartite agreement with the concerned financial institution so that home loan can be disbursed in favour of the complainant.

E.III. To stay the operation of demand letter with due date of 19.05.2020 and waiving the penalty of Rs. 2,14,950/- imposed by the respondent on the complainant.

27. The respondent is directed to issue revised statement of account to the complainant after adjusting DPC till date.

F. Directions of the Authority

28. 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 is directed to pay the interest at the prescribed rate i.e., 10.35% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.11.2021 till offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- ii. The respondent is directed to issue revised statement of account after adjusting the amount of DPC till date and the complainant is directed to pay the outstanding amount after adjustment of delay possession charges within 60 days.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.
- iv. The respondent is directed to cooperate with the complainant in execution of tripartite agreement with the concerned financial institution to facilitate disbursement of loan amount.


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- v. The respondent shall not levy/charge any charges which has not been specified in the buyer's agreement or Affordable Housing Policy, 2013 as amended from time to time.

29. Complaint stands disposed of.

30. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.12.2022

HARERA
GURUGRAM