

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

Date of decision: 24.01.2024

NAME OF THE BUILDER		Ocean Seven Buildtech Pvt. Ltd.	
PROJECT NAME		Golf Heights	
S. No.	Case No.	Case title	Appearance
1	CR/847/2021	Suhas Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Key 4 You	Adv. Harshit Batra (Complainant) None (Respondents)
2	CR/865/2021	Alok Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Key 4 You	Adv. Harshit Batra (Complainant) None (Respondents)
3	CR/923/2021	Hawa Singh Yadav V/s Ocean Seven Buildtech Pvt. Ltd. and Homzcare Consultancy Pvt. Ltd.	Adv. Harshit Batra (Complainant) None (Respondents)
4	CR/925/2021	Manish Kumar Agrahari V/s Ocean Seven Buildtech Pvt. Ltd. and Homzcare Consultancy Pvt. Ltd.	Adv. Harshit Batra (Complainant) None (Respondents)
5	CR/926/2021	Nitin Kumar V/s Ocean Seven Buildtech Pvt. Ltd. and M/s STG Realty	Adv. Harshit Batra (Complainant) None (Respondents)
6	CR/1141/2021	Manoj Singh V/s Ocean Seven Buildtech Pvt. Ltd.	Adv. Harshit Batra (Complainant) None (Respondents)
7	CR/1210/2021	Beauty Rani and Ors. V/s Ocean Seven Buildtech Pvt. Ltd. and Gurgaon Huda Affordable Housing	Adv. Harshit Batra (Complainant) None (Respondents)

8	CR/1236/2021	Umesh Kumar V/s Ocean Seven Buildtech Pvt. Ltd. and Gurgaon Huda Affordable Housing	Adv. Harshit Batra (Complainant) None (Respondents)
9	CR/1323/2021	Gena Devi and Ors. V/s Ocean Seven Buildtech Pvt. Ltd. and Future Capital Realty	Adv. Harshit Batra (Complainant) None (Respondents)
10	CR/1726/2021	Rashmi Kumari V/s Ocean Seven Buildtech Pvt. Ltd. and Gurgaon Huda Affordable Housing	Adv. Harshit Batra (Complainant) None (Respondents)
11	CR/4680/2020/821/2021	Mohan Agarwal V/s Ocean Seven Buildtech Pvt. Ltd. and M/s Team Realistic One	Adv. Harshit Batra (Complainant) None (Respondents)

CORAM:

Ashok Sangwan

Member
ORDER

1. This order shall dispose of the 11 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Golf Heights situated at Sector 69, Gurugram being developed by the respondent/promoter i.e., Ocean Seven Buildtech Private Limited. The

terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit along with interest.

3. Despite service of notices through speed post, email as well as through publication in the daily newspapers i.e., "Dainik Bhaskar" (Hindi) and "The Hindustan Times" (English) on 03.04.2023, the respondent failed to submit any reply and also failed to put in appearance before the authority. Therefore, authority was left with no other option but to proceed ex-parte against the respondents vide order dated 23.08.2023. Thereafter, on proceedings dated 22.11.2023, the proxy counsel for respondent no.1 (Ms. Garima) appeared on its behalf and stated that reply will be submitted very shortly. Thus, in the interest of justice, the respondent no.1 was given an opportunity to file written arguments within a period of 2 weeks with an advance copy to the complainant. However, the same has not been filed within the time allotted. Hence, in view of the same, the Authority is deciding the complaint(s) on the basis of these undisputed documents available on record and submissions made by the complainant(s).
4. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	" Golf Heights " at Sector 69, Gurgaon, Haryana.
Project area	5.4125 acres
DTCP License No.	28 of 2018 dated 02.05.2018 valid upto 01.05.2023
Name of Developer	Ocean Seven Buildtech Private Limited
RERA Registration	GGM/285/2018/17 dated 12.10.2018 valid upto 20.04.2023

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), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). 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 payments made as per Payment Plan."

Occupation Certificate: Not yet obtained

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit adm easu ring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/847/2021 Suhas Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 06.01.2023	06.04.2019 (Page 38 of complaint)	1108, 11 th floor, Tower-1 (Page 42 of complaint)	565 sq. ft. (carpet area) 99 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,09,500/- (As per BBA on page 47 of complaint) Amount Paid: - Rs. 6,23,565/- to Respondent no.1 + Rs.2,00,000/- to respondent no.2	Refund
2.	CR/865/2021 Alok Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 12.02.2021	20.04.2019 (Page 34 of complaint)	1101, 11 th floor, Tower-2 (Page 36 of complaint)	565 sq. ft. (carpet area) 99 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,09,500/- (As per BBA on page 40 of complaint) Amount Paid: - Rs. 6,23,565/- to Respondent no.1 + Rs.2,00,000/-	Refund

						to respondent no.2	
3.	CR/923/2021 Hawa Singh Yadav V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 26.02.2021	10.04.2019 (Page 39 of complaint)	408, 4 th floor, Tower 4 (Page 44 of complaint)	565 sq. ft. (carpet area) 99 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,09,500/- (As per BBA on page 45 of complaint) Amount Paid: - Rs. 9,35,349/- to Respondent no.1 + Rs.1,70,000/- to respondent no.2	Refund
4.	CR/925/2021 Manish Kumar Agrahari V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 26.02.2021	06.04.2019 (page 37 of complaint)	108, 1 st floor, Tower 4 (Page 42 of complaint)	565 sq. ft. (carpet area) 99 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,09,500/- (As per BBA on page 45 of complaint) Amount Paid: - Rs. 9,35,349/- to Respondent no.1 + Rs.1,70,000/- to respondent no.2	Refund
5.	CR/926/2021 Nitin Kumar V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 23.02.2021	30.04.2019 (page 37 of complaint)	202, 2 nd floor, Tower 3 (Page 44 of complaint)	574 sq. ft. (carpet area) 98 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,45,000/- (As per BBA on page 45 of complaint) Amount Paid: - Rs. 6,33,150/- to Respondent no.1	Refund
6.	CR/1141/2021	Not executed	1507, Tower 4	574 sq. ft. (carp	10.10.2023 (Calculated as 4 years	Total Sale Consideration: Rs. 23,45,000/- (As per price	Refund



	Manoj Singh V/s Ocean Seven Buildtech Pvt. Ltd. DOF: 08.09.2021	Date of allotment letter: 14.03.2019 (page 29 of complaint)	(as per allotment letter on page 50 of complaint)	et area) 98 sq.ft (balcony area)	from date of EC i.e., 10.10.2019 as per the Policy of 2013)	list on page 26 of complaint) Amount Paid: - Rs. 1,17,250/- to Respondent no.1 (as per receipt dated 26.10.2018)	
7.	CR/1210/2021 Beauty Rani and Ors. V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 22.03.2021	04.09.2019 (page 35 of complaint)	1506, 15 th floor, Tower 4 (Page 40 of complaint)	574 sq. ft. (carpet area) 98 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,45,000/- (As per BBA on page 41 of complaint) Amount Paid: - Rs. 9,49,725/- to Respondent no.1+ Rs.1,80,000/- to respondent no.2	Refund
8.	CR/1236/2021 Umesh Kumar V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 19.03.2021	Not executed Date of allotment letter: 14.03.2019 (page 26 of complaint)	1106, Tower 1 (as per allotment letter on page 26 of complaint)	574 sq. ft. (carpet area) 98 sq.ft (balcony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,45,000/- (As per price list on page 21 of complaint) Amount Paid: - Rs. 6,33,150/- to Respondent no.1+ Rs.1,80,000/- to respondent no.2	Refund
9.	CR/1323/2021 Gena Devi and Ors. V/s Ocean Seven Buildtech	Not executed Date of allotment letter: 14.03.2019 (page 23 of complaint)	1902, Tower 4 (as per allotment letter on page	574 sq. ft. (carpet area) 98 sq.ft (balc	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the	Total Sale Consideration: Rs. 23,45,000/- (As per price list on page 20 of complaint) Amount Paid: - Rs. 1,17,250/-	Refund

	Pvt. Ltd. and Ors. DOF: 19.03.2021		23 of compla int)	ony area)	Policy of 2013)	to Respondent no.1 (as per receipt dated 28.10.2018)	
10.	CR/1726/ 2021 Rashmi Kumari V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 25.03.2021	Not executed Date of allotment letter: 14.03.2019 (page 26 of complaint)	107, Tower 2 (as per allotme nt letter on page 23 of compla int)	574 sq. ft. (carp et area) 98 sq.ft (balc ony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,45,000/- (As per price list on page 23 of complaint) Amount Paid: - Rs. 6,23,770/- to Respondent no.1	Refund
11.	CR/4680/ 2020/821/ 2021 Mohan Agarwal V/s Ocean Seven Buildtech Pvt. Ltd. and Ors. DOF: 15.12.2020	05.04.2019 (Page 48 of complaint)	1807, 18 th floor, Tower 2 (Page 50 of compla int)	574 sq. ft. (carp et area) 98 sq.ft (balc ony area)	10.10.2023 (Calculated as 4 years from date of EC i.e., 10.10.2019 as per the Policy of 2013)	Total Sale Consideration: Rs. 23,45,000/- (As per BBA on page 54 of complaint) Amount Paid: - Rs. 9,49,725/- to Respondent no.1+ Rs.1,90,000/- to respondent no.2	Refund

5. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking refund of the total paid up amount.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters,

the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

7. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/847/2021** titled as **Suhas Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Ors.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

8. The particulars of the project, the details of 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:

CR/847/2021 Suhas Goyal V/s Ocean Seven Buildtech Pvt. Ltd. and Ors.

S. N.	Particulars	Details
1.	Name of the project	"Golf Heights", Sector 69, Gurugram
2.	Nature of the project	Affordable Housing
3.	DTCP license no. and validity status	28 of 2018 dated 02.05.2018
4.	RERA Registered/ not registered	GGM/285/2018/17 dated 12.10.2018 valid upto 20.04.2023
5.	Allotment Letter	14.03.2019 (page 31 of complaint)
6.	Unit no.	1108, 11th floor, Tower 1 (Page 42 of complaint)
7.	Unit area admeasuring	565 sq. ft. (carpet area) 99 sq.ft (balcony area) (Page 42 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	06.04.2019 (Page 38 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



		<i>licence (commitment period), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). 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 payments made as per Payment Plan."</i>
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	10.10.2019 (as per averments made by the complainant on page 5 of CRA complaint)
12.	Date of approval of building plans	20.07.2018 (As per project details)
13.	Due date of possession	10.10.2023 (Calculated as 4 years from date of EC as per the policy of 2013)
14.	Total sale consideration	Rs. 23,09,500/- (As per BBA on page 47 of complaint)
15.	Amount paid by the complainant	Amount Paid: Rs. 6,23,565/- to Respondent no.1 + Rs.2,00,000/- to Respondent no.2
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

9. The complainant has made the following submissions in the complaint: -
- I. That the complainant booked a unit in the project of the respondent no.1 named "Golf Heights" at Sector 69, Gurugram under the Affordable Housing Policy 2013 and was allotted a flat bearing no. 1108, in Tower-1 having carpet area of 565 sq. ft along with balcony with area of 99 sq. ft in the said project vide allotment letter dated 14.03.2019. Thereafter, a builder buyer agreement was executed between the complainant and respondent no.1 regarding the said allotment for a total sale consideration of Rs.23,09,500/- on 06.04.2019.
 - II. That the respondent no.2 is RERA registered agent having registration number 317 of 2017 dated 14.09.2017 and was responsible for facilitating the agreement of sale between the complainant and respondent No.1 by acting as an agent.
 - III. That the complainant was deceived by respondent no. 1 to pay a sum of Rs.200,000/- towards the misrepresentation that the complainant's application will only be selected if he pays the said amount immediately. The complainant being in need of a home for himself and his family paid the said amount to the respondent no.2 in cash and the same was acknowledged by it vide acknowledgement slip dated 29.10.2018.
 - IV. That the complainants had paid a sum of Rs.6,23,565/- to the respondent-promoter which is more than 27% of the total sale value even before entering into any written agreement to sell (BBA), which is a clear violation of Section 13 of the Real Estate Regulation and Development Act, 2016.

- V. That the respondent no.1 has used its dominant position to create arbitrary clauses in the BBA, such as clause 4.5 (i), where the interest on delay/failure of instalment is set @15% which is not justified.
- VI. That the respondent started issuing demand letters to the complainant demanding payment for the next instalment. However, the complainant was surprised to see that there was no mention of Rs.2,00,000/- that was paid by the complainant at the time of booking to the respondent no.1 in cash mode.
- VII. That the complainant had several times visited the site and was devastated to see the fact that the construction of the project had not even begun. Even 16 months after the execution of the builder buyer agreement and after paying a large sum of money to the promoter, there was no progress in the construction at all. The complainant also came to know that the promoter received the Environment Clearance only on 10.10.2019, but the promoter had mentioned in the agreement that all the required approvals have already been obtained.
- VIII. That the complainant when contacted the other allottees of the same project, he was surprised to know that the allottees who sought a loan from the bank to purchase the unit in the project were denied by the banks on the account that there was no construction on the project site at all while specifically mentioning "*that the progress of property was not up to mark in comparison to the demand raised by the builder. Thus, the bank shall not be proceeding with the disbursement request*".
- IX. That the complainant came to the knowledge that the said land in project is a land in dispute in the month of June 2019 only by the way of a Public Notice in the Hindustan Times where M/s Unitech had published two public notices against the respondent no.1 that the land in the said project

is under litigation vide civil suit bearing no. 519/2017 and is pending against the landowners of the project in question and the respondent No.1 in the court of Ms. Suyasha Jawa CJ(JD), Gurugram. The public notice was to inform the public not to invest in the project.

- X. That the respondent no.1 has sent many demand letters to the complainant demanding the instalments. However, the complainant has denied paying such instalments because of the fact that no construction had taken place at all at the project land.
- XI. That the complainant has paid an amount of Rs.8,23,565/- towards the payment of the total sales consideration of the unit (Rs.6,23,565/- + Rs.200,000/- as paid on 29.10.2018) and there is not an iota of construction to be seen at the project land.
- XII. That the latest picture of the site shows that no construction has been done despite the lapse of more than 2 years from the date of booking which goes to show that the respondent no.1 had a malafide intention from the beginning. The complainant cannot be expected to wait indefinitely for the possession of the unit when he has already paid a substantial amount and no construction has been done on land which is already disputed. Moreover, with the current progress of the construction as well the litigation pending on the project land, it is impossible for the respondent no.1 to start the construction and to hand over the possession at the due time.

C. Relief sought by the complainant: -

10. The complainant has sought following relief(s):

- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

11. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
12. 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 complainant.

D. Jurisdiction of the authority

13. 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

14. 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

15. 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.

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and

scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to refund the paid-up amount along-with prescribed rate of interest.

19. The complainant was allotted a unit bearing no. 1108, in Tower-1 having carpet area of 565 sq. ft along with balcony with area of 99 sq. ft in the project of respondent named "Golf Heights" at Sector 69, Gurugram under the Affordable Housing Policy 2013 vide allotment letter dated 14.0.3.2019. Thereafter, a builder buyer agreement was executed between the complainant and respondent no.1 regarding the said allotment for a total sale consideration of Rs.23,09,500/- on 06.04.2019. As per clause 1(iv) of the policy of 2013, all projects under the said policy 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. Thus, the possession of the unit was to be offered within 4 years from the approval of building plans (20.07.2018) or from the date of environment clearance 10.10.2019 (as admitted by the complainant). Therefore, the due date of possession has been calculated from the date of environment clearance i.e., 10.10.2019, as per policy of 2013, which comes out to be 10.10.2023. As per record, the complainant has paid an amount of Rs.6,23,565/- to respondent no.1 and an amount of Rs.2,00,000/- was paid in cash to the respondent no.2 to confirm the booking of the flat. Due to inordinate delay on part of the respondent to start construction of the project in question, the

complainant has surrendered the unit/flat by filing the present complaint on 12.02.2021 i.e., after 1.4 years from the date of commencement of the project.

20. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [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)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year 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

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".



21. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to deduct the amount in accordance with clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1 (iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 10.10.2019 is later and hence, the same would be considered as date of commencement of project.
22. Accordingly, the details of the amount to be refunded as per the policy in each case is as under:

Complaint no.	Date of surrender	Forfeiture of amount in addition to Rs.25,000/-
CR/847/2021	12.02.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/865/2021	12.02.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/923/2021	26.02.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy



		of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/925/2021	26.02.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/926/2021	23.02.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/1141/2021	08.09.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/1210/2021	22.03.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.



CR/1236/2021	19.03.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/1323/2021	19.03.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/1726/2021	25.03.2021	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.
CR/4680/2020	15.12.2020	Respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 since the request for surrender is upto 2 year from the date of commencement of project.

23. The respondent/promoter is directed to refund the paid-up amount after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by

the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date surrender/withdrawal of allotment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

24. The respondent no. 2 is directed to refund the brokerage amount of Rs.2,00,000/- received by it from the complainant after deduction of 0.5% of the sale consideration of the unit.

F. Directions of the authority

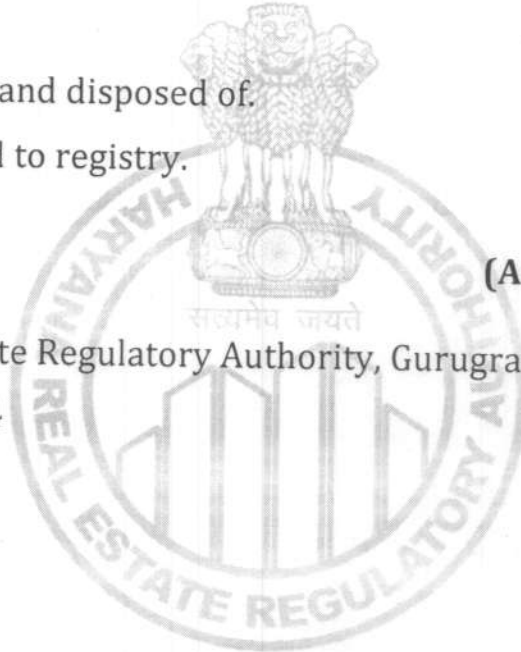
25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent/promoter is directed to refund the paid-up amount received by it from each of the complainant(s) after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date surrender/withdrawal of allotment till the actual realization of the amount.

- ii. The respondent no. 2 (i.e., real estate agent) is directed to refund the amount of Rs.2,00,000/- received by it from the complainant(s), after deduction of 0.5% of the sale consideration of the unit.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
26. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
 27. The complaints stand disposed of.
 28. Files be consigned to registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2024



(Ashok Sangwan)
Member

HARERA
GURUGRAM