

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

Complaint no. : 4750 of 2022
Date of filing : 07.07.2022
Date of decision : 02.01.2024

Geeta Kasana
R/o H. No. 1 Type 4 Thapar University Patiala,
Patiala-147004, Punjab, India

Complainant

Versus

M/s Ocean Seven Buildtech Pvt. Ltd.
Office address: B4-505,506 Spaze I Tech Park,
Sohna Road, Sector 49, Gurugram-122001

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri B.L. Jangra (Advocate)
Shri Arun Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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. Project and unit related details

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

S.No.	Particulars	Details
1.	Name of the project	Expressway Tower, Sector- 109, Gurugram, Haryana
2.	Project area	7.5 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and validity status	06 of 2016 dated 16.06.2016 Valid up to 15.06.2021
5.	RERA Registered/ not registered	Registered vide no. 301 of 2017 dated 13.10.2017 Valid up to 12.10.2021
6.	Allotment letter	20.05.2017 [Page 19 of complaint]
7.	Builder buyer agreement	Not placed
8.	Tripartite agreement	Date not mentioned [Page 22 of complaint]
9.	Flat no.	1103, Type I, tower 3 [Page 19 of complaint]
10.	Unit admeasuring	645 sq. ft. (carpet area) [Page 19 of the complaint]



11.	Possession clause as per Affordable housing policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <i>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 licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
12.	Building plans approved on	26.09.2016
13.	Environmental clearance	30.11.2017
14.	Due date of possession	30.11.2021 Note: The due date is calculated from the date of environment clearance being later.
15.	Total sale price of the flat	Rs. 27,18,243/- [As per demand letter dated 12.05.2020 at page 30 of complaint]
16.	Amount paid by the complainant	Rs. 6,57,375/- [As per demand letter dated 12.05.2020 at page 30 of complaint]
17.	Refund request letter by complainant	12.02.2021 [Page 32 of complaint]
18.	Cancellation	As per email dated 26.11.2021, cancellation was done in 2019. [Page 33 of compliant & para 11 at page 9 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That in the year 2013, under the affordable housing policy issued by the Govt. of Haryana, the respondent invited booking application for allotment of residential units/flats in the project known as "Expressway Towers" Sector 109, Gurugram to be developed and constructed by the respondent.
 - b. That the complainant submitted a booking application no. 2182 by paying sum of Rs.1,31,457/- through cheque dated 04.11.2016 in favour of the respondent for allotment of a residential flat in the said project. In terms of policy, draw of flats were conducted and flat no. 1103, Tower 3 having carpet area of 645.00 sq. ft. was allotted to the complainant by issuing allotment letter dated 20.05.2017. The total cost of the said flat was sum of Rs. 26,29,500/- and offer of possession of the said flat was to be made within four years from date of allotment. The complainant availed loan sum of Rs. 15,00,000/- from State Bank of India by mortgaging the allotted flat and a Tripartite Agreement was signed among the complainant, the respondent and State Bank of India. The complainant paid demands as and when raised by the respondent. However, no construction work over the project land was started by the respondent despite receiving payment from the complainant but the respondent kept sending illegal demands to the complainant.
 - c. That in response to the demand of Rs. 3,68,130/- raised by the respondent in the year 2017, the complainant visited many times and inspected the project site where no construction activity was

- undertaken by the respondent. In this regard, the complainant sent many mails to the respondent asking the progress report of the project and to provide Environment Clearance Letter from the department but of no result.
- d. That in response to the mail 13.11.2017 sent by the complainant, the respondent sent a mail dated 15.11.2017 mentioning that Environment Clearance has not been received yet and the complainant was instructed to hold payment for the time being. The complainant was always ready to make the payment as evident from communication exchanged between the complainant and respondent but the respondent failed to adhere the terms and condition of affordable housing policy. The respondent kept sending demand notice for the balance consideration amount. In response to the demand raised by the respondent, the complainant approached the bank to disburse the amount however, the Bank refused to disburse the loan amount due to slow construction of the project.
- e. That in the year 2019, the complainant was informed by the respondent that said flat has been cancelled due to non-payment of the said flat and gave false assurance to refund the sale consideration within 15 days but respondent purposely hold the payment and no refund was made.
- f. That it is evident from the act and omission on the part of the respondent that the respondent had failed to start the construction work of the project and to hide their misdeed, illegally cancelled the said flat hence the complainant had no option except to seek refund

amount from the respondent. In this regard the complainant sent a hand written letter dated 12.02.2021 addressing the respondent to refund the sale consideration amount after deduction of Rs. 25,000/- and refund the balance payment. The complainant had written many mails/communication to the respondent to refund the sale consideration amount but of no consequence.

- g. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, and illegal cancellation of the said flat, the chances of getting physical possession of the assured flat in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers who have spent hard earned money in purchasing the said flat thus caused the complainant great monetary loss. The respondent by its acts and omission had violated the provision of section 18 of the Act for failure of the promoter to complete or unable to start construction work of the project therefore the respondent is liable to refund the amount paid by the complainant along with interest as provided in section 18 the Act. Despite regular follow up, the respondent had refused to refund sale consideration on one pretext or the other pretext, therefore the complainant is left with no other efficacious remedy available except to file the present complaint before this Hon'ble Authority.

C. Relief sought by the complainant:

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



- a. Direct the respondent to refund the entire sum of Rs. 6, 57,375/- paid by the complainant along with prescribed rate of interest.
 - b. Any other relief, which the Hon'ble Authority deems fit may also, be granted.
5. On 26.07.2023, 25.10.2023 and 21.11.2023, the respondent was directed to file the reply within stipulated time period, but the respondent failed to comply with the orders of the authority. On the hearing dated 02.01.2024, the counsel for the respondent stated that the reply will be filed in the registry of the authority within a period of one week with the cost of Rs.5,000/- to be paid to the complainant. However, despite the said assurance, the respondent has failed to file reply within the stipulated timeframe. In view of the conduct of the respondent, the authority is left with no option but to striking off the defence of the respondent.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainant.

D. 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.

D. 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.

D. 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 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 complainants.

- E.I **Direct the respondent to refund the entire sum of Rs. 6, 57,375/- paid by the complainant along with prescribed rate of interest**
11. The complainant was allotted unit no. 1103 on 11th floor, in tower – 3, in the project Expressway Tower, Sector- 109, Gurugram, Haryana by the respondent/builder for a total consideration of Rs. 27,18,243/- under the Affordable Housing Policy, 2013 vide allotment letter dated 20.05.2017.



However, the buyer's agreement was not executed inter se parties. As per clause 1(iv) Affordable Housing Policy, 2013, it is stated 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 respondent has obtained environment clearance and building plan approval in respect of the said project on 30.11.2017 and 26.09.2016 respectively. The due date of possession is being calculated from the date of environmental clearance being later. Therefore, the due date of possession comes out to be 30.11.2021. The complainant paid a sum of Rs. 6,57,375/- and is always ready and willing to retain the allotted unit in question.

12. The counsel for the respondent states that the unit has been cancelled on 26.11.2021 after a refund request made by the complainant on 12.02.2021. The counsel for the complainant is not challenging the cancellation and rather request for refund of the amount after deduction as per Affordable Housing Policy, 2013.
13. In the present complaint, the respondent has failed to make refund of the balance amount after making deductions as per the Affordable Housing Policy, 2013. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments **within a period of 15 days from the date of issue of such notice**. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional*



Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

14. As per cancellation clause of the Affordable Housing Policy, 2013, the respondent can deduct an amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy, 2013 along with interest from date of cancellation of allotment till the actual realization of the amount.

F. Directions of the authority


15. 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 refund the paid-up amount of Rs. 6,57,375/- after deduction of Rs.25000/- as per clause 5(iii)(i) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment till the actual realization of the amount.

II. 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.

16. Complaint stands disposed of.

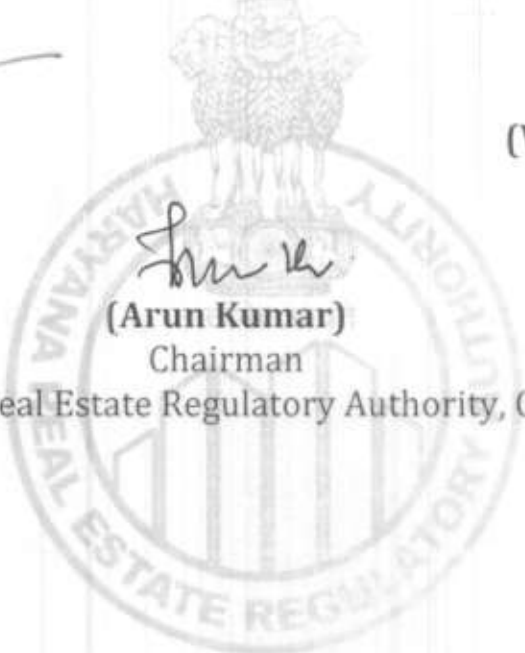
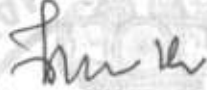
17. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.01.2024