

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

Date of decision: 20.02.2024

NAME OF THE BUILDER		Ocean Seven Buildtech Pvt. Ltd.	
PROJECT NAME		The Venetian, Sector- 70, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/8094/2022	Gaurav Dimri Vs. M/s Ocean Seven Buildtech Private Limited	Shri Vimal Dimri (Complainant's Father) Adv. Arun Kumar (Respondent)
2.	CR/6256/2022	Renu Kumari Barsiwal Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
3.	CR/7825/2022	Ashish Garg Vs. M/s Ocean Seven Buildtech Private Limited	None (Complainant) Adv. Arun Kumar (Respondent)
4.	CR/1481/2023	Manish Kumar Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
5.	CR/1503/2023	Sumit Kajal Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of 5 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 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, The Venetian, Sector- 70, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s 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 thus seeking refund of the unit along with interest.
3. 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	"The Venetian", Sector- 70, Gurugram, Haryana.
Project area	5.10 acres
Nature of the project	Affordable group housing colony
DTCP license no. and other details	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others

Building plan approval dated	07.02.2020 (As per DTCP website)
Environment clearance dated	Not yet obtained
RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 Valid up to- 02.09.2024
Occupation certificate	Not yet obtained
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>

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant	Date of request of refund by the complainant	Relief sought
1.	CR/8094/2022 Gaurav Dimri Vs. M/s Ocean Seven Buildtech Private Limited DOF: 06.01.2023 RR: 20.12.2023	1602, tower 4 571.10 5 sq. ft. (carpet area)	Not executed	Cannot be ascertained	TC: Cannot be ascertained AP: Rs. 8,83,785/-	18.11.2022	Refund along with interest and compensation

2.	CR/6256/2022 Renu Kumari Barsiwal Vs. M/s Ocean Seven Buildtech Private Limited DOF: 07.10.2022 RR: 20.12.2023	1104, tower 1 556.28 0 sq. ft. (carpet area)	Not executed	Cannot be ascertained	TC: Rs. 22,92,828 AP: Rs. 8,59,811/-	23.05.2022	Refund along with prescribed rate of interest
3.	CR/7825/2022 Ashish Garg Vs. M/s Ocean Seven Buildtech Private Limited DOF: 02.01.2023 RR: 20.12.2023	1003, tower 4 571.10 5 sq. ft. (carpet area)	Not executed	Cannot be ascertained	TC: Cannot be ascertained AP: Rs. 5,89,189/-	18.12.2021	Refund along with prescribed rate of interest
4.	CR/1481/2023 Manish Kumar Vs. M/s Ocean Seven Buildtech Private Limited DOF: 03.04.2023 RR: 20.12.2023	1207, tower 5 571.10 5 sq. ft. (carpet area)	Not executed	Cannot be ascertained	TC: Rs. 23,33,420 AP: Rs. 8,83,785	30.08.2022	Refund along with prescribed rate of interest

5.	CR/1503/2023 Sumit Kajal Vs. Ocean Seven Buildtech Private Limited DOF: 03.04.2023 RR: 20.12.2023	803, tower 4 571.10 5 sq. ft. (carpet area)	24.07.20 21 Comple e copy not placed on record	Cannot be ascertained	TC: Rs. 23,33,420 AP: Rs. 5,89,189	24.02.2022	Refund along with prescribed rate of interest
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s

4. 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/8094/2022** titled as **Gaurav Dimri Vs. M/s Ocean Seven Buildtech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. 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/8094/2022 titled as Gaurav Dimri Vs. M/s Ocean Seven Buildtech Pvt. Ltd.

S. No.	Particulars	Details
1.	Name of the project	The Venetian, Sector 70, Gurugram, Haryana

2.	Project area	5.10 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and validity status	103 of 2019 dated 05.09.2019 Valid up to 04.09.2024 Licensee- Shree Ratan Lal and others
5.	Building plan approval dated	07.02.2020 (As per DTCP website)
6.	Environment clearance dated	Not yet obtained
7.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 Valid upto 02.09.02024
8.	Allotment letter	09.03.2021 [Page 12 of complaint]
9.	Builder buyer agreement	Not executed
10.	Flat no.	1602, Type I, tower 4 [Page 12 of complaint]
11.	Unit admeasuring	571.105 sq. ft. (carpet area) (Page 12 of the complaint)
12.	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>
13.	Due date of possession	Cannot be ascertained

14.	Total sale price of the flat	Cannot be ascertained
15.	Amount paid by the complainant	Rs. 8,83,785/- [As per letter dated 23.02.2022 at page 18 of complaint]
16.	Cancellation/refund email by complainant	18.11.2022 [page 20 of complaint]
17.	Occupation certificate	Not yet obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainant has made the following submissions in the complaint: -

- I. That the complainant booked a flat in the project namely "The Venetian" launched by the respondent by paying booking amount of Rs.1,16,671/- vide cheque dated 16.12.2020. Thereafter, the respondent issued allotment letter dated 09.03.2021 in favour of the complainant. The respondent through abovementioned letter intimated the complainant that he is successful applicant in the draw conducted and have been allotted 2BHK flat bearing no. 1602 in Tower 4 having carpet area of 571.105 sq. ft. and balcony area of 98 sq. ft. Vide said Allotment/demand letter, a demand of Rs.4,72,518/- was raised by the respondent bearing due date of the said demand as 24.03.2021 and the same was paid by the complainant well within time on 19.03.2021.
- II. That thereafter, the respondent raised a demand of Rs.2,94,596/- vide letter dated 26.08.2021 and the same was paid by the complainant vide cheque dated 07.09.2021. Subsequently, a demand letter dated 23.02.2022 was issued by the respondent to the complainant which was due by 09.03.2022. The said demand was undue and not relevant. Hence, for the same concern,

- the complainant contacted the respondent and got to know that the project is waited for getting necessary clearance i.e., EC.
- III. That the complainant through email dated 23.03.2022 again tried to reach the respondent and stated his concern and requested for the cancellation and refund of the amount paid by the complainant as it was still under clearance process but again failed to get relevant response from the respondent. Consequently, vide email dated 26.09.2022, the complainant requested the respondent to allot him the property in their other project and adjust the amount paid by the complainant in this project but again no relevant response was provided by the respondent.
- IV. That the complainant is still requesting the requesting the respondent to refund the hard earned money paid by him for the subject unit in the said project as after more than one and a half year, the respondent has failed in getting Environment Clearance in respect of the subject project.
- V. Thus, the present complaint.
- C. Relief sought by the complainant: -**
7. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with interest@ 18% p.a. from the date of each payment.
 - II. Direct the respondent to pay to the complainant compensation to the tune of Rs.2,00,000/- for causing mental agony by not refunding the amount paid by the complainant.
8. 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.

D. Reply by the respondent

9. The respondent is contesting the complaint on the following grounds:

- I. That this hon'ble authority lacks jurisdiction to adjudicate upon the present complaint. Both parties have executed an arbitration clause, clearly outlined in the agreement, empowering either party to seek resolution through arbitration. As per the said arbitration clause, any disputes arising out of the agreement shall be submitted to an arbitrator for resolution. Therefore, the present matter be referred to arbitration in accordance with the terms set forth in the agreement.
- II. That as expressly stipulated in the agreement to sale, the parties, herein, the complainant and respondent, have unequivocally agreed to resolve any disputes through arbitration. This agreement to sell is fortified by clause 16.2 wherein it is stated that all or any disputes arising out of or touching upon or relating to the terms of this agreement to sell/conveyance deed including the interpretation and validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled despite best efforts, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the company in Gurgaon by a sole arbitrator who shall be appointed by the company. The cost of the arbitration proceedings shall be borne by the parties equally. The language of arbitration shall be in English. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon, Haryana as well as of Punjab and Haryana High

- court at Chandigarh. That the respondent has not filed his first statement before this court in the subject matter.
- III. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments. The complainant is a defaulter under section 19(6) & 19(7) of the Act. It is humbly submitted that the complainant failed to clear his outstanding dues despite several reminders that were issued by the respondent.
- IV. That the complainant's motives are marred by malafide intentions. The present complaint, founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. The complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint. This action is not only illegal and unlawful but also goes against the principles of natural justice.
- V. That there is every apprehension that the complainant in collusion with any staff member of the respondent company including ex-employee or those who held positions during that time may put forth the altered and fabricated document which is contradictory to the affordable housing policy & should not be considered binding on the company in any manner whatsoever.
10. 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.

E. Jurisdiction of the authority

11. 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

12. 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

13. 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.

14. 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.
15. 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."

16. 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.

F. Findings on objections raised by the respondent

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

17. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"33. Dispute Resolution by Arbitration

All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Managing Director of the Seller and whose decision shall be final and binding upon the Parties. The Purchaser(s) hereby confirms that he shall have no objection to this appointment of the Sole Arbitrator by the Managing Director of the Seller, even if the person so appointed, as a Sole Arbitrator, is an employee or advocate of the Seller / Confirming Party or is otherwise connected to the Seller / Confirming Party and the Purchaser(s) confirms that notwithstanding such relationship / connection, the Purchaser(s) shall have no doubts as to the independence or impartiality of the said Sole Arbitrator. The Courts at New Delhi and Delhi High Court at New Delhi alone shall have the jurisdiction."

18. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

19. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a

large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

20. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh** in revision petition no. **2629-30/2018** in civil appeal no. **23512-23513** of 2017 decided on **10.12.2018** has upheld the aforesaid judgment of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgment passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

21. Therefore, in view of the above judgments and considering the provision of the Act, the authority is of the view that complainant is well within his

rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the present complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Apprehension by the respondent regarding fabrication of the documents by the complainant-allottee.

22. The respondent has raised an objection that it has apprehension that the present complaint is founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. It is further stated that the complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint.
23. The authority observes that the objection raised by the respondent are vague and false as the respondent has not specified as to what document is fabricated which is in violation of the Affordable Housing Policy, 2013. Further, the respondent has failed to substantiate the said allegations during the course of arguments and has failed to corroborate the same by placing on record requisite documents. The authority is of the view that only apprehension cannot be a ground for dismissal of complaint and cannot defeat the ends of justice. Thus, the objection raised by the respondent stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the paid-up amount along-with interest.

24. The complainant was allotted a unit bearing no. 1602, in Tower-4 having carpet area of 571-105 sq. ft. along with balcony with area of 98 sq. ft. in the project of respondent named "Venetian" at Sector 70, Gurugram under the

Affordable Housing Policy, 2013 vide allotment letter dated 09.03.2021. Thereafter, builder buyer agreement was not executed between the complainant and respondent in respect of the subject unit. 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 (07.02.2020) or from the date of environment clearance (not obtained yet). Therefore, the due date of possession cannot be ascertained. As per record, the complainant has paid an amount of Rs.8,83,785/- to respondent. Due to failure on the part of the respondent in obtaining environment clearance from the concerned authority and inordinate delay on part of the respondent to start construction of the project in question, the complainant has surrendered the unit/flat vide email dated 18.11.2022.

25. 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 regarding surrender of the allotted unit by the allottee has been laid down and the same is reproduced as under:

Clause 5(iii) (h) of the Affordable Housing Policy, 2013

"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".

26. In the present matter, the subject unit was surrendered by the complainant-allottee vide letter dated 18.11.2022 due to failure on the part of the respondent in obtaining environment clearance and has requested the respondent to cancel the allotment and refund the entire amount paid by him along with interest.
27. The counsel for the respondent states at bar that the respondent has no objection to refund the amount subject to deduction of amount as per Affordable Housing Policy, 2013.
28. The authority vide proceedings dated 02.01.2024 has allowed refund as per clause 5(iii) of the Affordable Housing Policy, 2013 and interest to be paid from the date of seeking cancellation till realisation of the amount.

29. However, it has come to the notice of the authority that the respondent has failed to obtain environmental clearance from the competent authority till date. It is pertinent to mention here that as per the clause 5 (iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015 provides that if the licensee fails to get environmental clearance even one year of holding draw, the licensee is liable to refund the amount deposited by the applicant along with an interest of 12%, if the allottee so desires. The relevant provision is reproduced below for ready reference:
- "The flats in a specific project shall be allotted in one go within four months of the sanction of building plans. In case, the number of applications received is less than the number of sanctioned flats, the allotment can be made in two or more phases. However, the licensee will start the construction only after receipt of environmental clearance from the competent authority.
The licensee will start receiving the further installments only once the environmental clearance is received. Further, if the licensee, fail to get environmental clearance even after one year of holding of draw, the licensee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."*
30. Also, the respondent has raised an objection that complainant allottee is a wilful defaulter and has failed to make payment of the instalments and has thus violated provisions of section 19(6) & (7) of the Act. In this regard, the authority observes that as per clause 5(iii)(b) of the Affordable Housing Policy, 2013, the licensee will start receiving the further installments only once the environmental clearance is received. As delineated hereinabove, the respondent has failed to obtain environmental clearance till date, thus, are not entitled to receive any further payments. Hence, the objection raised by the respondent is devoid of merits.
31. Further, as per amendment dated 09.07.2018 in Affordable Group Hosing Policy, 2013, the rate of interest in case of default shall be as per rule 15 of

the Haryana Real Estate (Regulation and Development) Rules, 2017. Rule 15 of the rules is 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]


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.

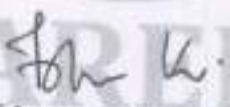
32. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
33. Thus, the complainant-allottee is entitled to refund of the entire amount deposited along with interest at the prescribed rate as per aforesaid provisions laid down under Affordable Housing Policy, 2013.
34. Hence, the respondent/promoter is directed to refund the entire paid-up amount as per clause 5(iii)(b) of the of Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, 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 of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

- G.II Direct the respondent to pay to the complainant compensation to the tune of Rs.2,00,000/- for causing mental agony by not refunding the amount paid by the complainant**
35. The complainant is also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation under the provisions of the Act.
- H. Directions of the authority**
36. 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:
- The respondent is directed to refund the entire paid-up amount as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, along with prescribed rate of interest i.e., @10.85% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of each payment 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 failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainant(s), and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant(s).
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.
38. The complaints stand disposed of.
39. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.02.2024