

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

**Complaint no.** : 1210 of 2023  
**Date of filing** : 29.03.2023  
**Date of decision** : 16.02.2024

Archana Prabhakar

**R/o** Flat no. L/603, AWHO, Sispal Vihar, Near  
South City- II, Sector - 49, Gurugram, Haryana,  
India

**Complainant**

Versus

M/s Ocean Seven Buildtech Pvt. Ltd.  
**Office address:** B4-505,506, 5<sup>th</sup> floor, Spaze I Tech  
Park,  
Sohna Road, Gurugram-122018

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Harshit Batra (Advocate) with complainant in  
person

**Complainant**

Shri Arun Yadav (Advocate)

**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.N.	Particulars	Details
1.	Name and location of the project	"Express way towers" Sector 109, Gurugram
2.	Project area	7.5 acres
3.	Nature of the project	Residential (Affordable Group housing)
4.	DTCP license no. and validity status	06 of 2016 dated 16.06.2016 valid up to <b>15.06.2021</b>
6.	RERA registered/ not registered and validity status	<b>Registered vide no. 301 of 2017 dated 13.10.2017</b> <b>Valid up to 12.10.2021</b> <i>Registration expired</i>
7.	Unit no.	1705, tower - 4 (Page 34 of complaint)
8.	Unit admeasuring	644 sq.ft. (Page no. 34 of complaint)
9.	Allotment/demand Letter	20.05.2017 (Page no. 34 of complaint)
10.	Date of MOU	28.01.2013 (Page no. 21 of complaint)



11.	Date of buyer agreement	Not placed/executed
12.	Building plans approved on	26.09.2016 (taken from another file of same project)
13.	Environmental clearance	30.11.2017 (taken from another file of same project)
12.	Total Price	Rs. 27,14,626/- (As per demand letter on page 36 of complaint)
13.	Total amount paid by the complainant	Rs. 20,51,000/- (As per page 19 of complaint)
14.	Possession clause as per Affordable housing policy, 2013	<b>1(IV) of the Affordable Housing Policy, 2013</b> <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>
15.	Due date of delivery of possession	30.11.2021 <b>Note:</b> The due date is calculated from the date of environment clearance being later.
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered



18.	Refund request letter by complainant	06.09.2022 [Page 38 of complaint]
19.	Letter acknowledging the refund request	07.10.2022 [Page 39 of complaint]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- That the complainant was lured by the false assurance and gimmicks of the respondent to invest in a **"Future Project"** of the respondent. That with respect to the said investment, both the parties executed a **"Memorandum of Understanding"** dated 28.01.2013 whereby the complainant was allotted a share of 1000Sq.ft. in the said project at the proposed basic sale price of Rs. 3951/- Per sq.ft.
  - That with respect to the terms and conditions of the said memorandum of understanding, the complainant duly made a payment of Rs. 20,51,000/- in the year 2013 itself, on the assurances of the respondent.
  - That further in terms of the **clause 5** of the said memorandum of understanding, it was also agreed upon, that in case the respondent fails to up-bring the future project due to any reason whatsoever within 12-15 months from the date of MOU, the respondent shall pay back her with **simple interest @18%** per annum from the date of receiving the payment.
  - That the respondent, instead of refunding her amount, arbitrarily, after a delay of more than 3 years, allotted a unit to her in its affordable group housing residential project by the name of **"The Expressway**

**Towers**" at Sector 109, Gurugram, Haryana vide application No. 4076 on 29.12.2020 under its own management quota. That **after** the said booking, the respondent issued an allotment letter dt.20.05.2017 to the complainant and allotted a unit

- e. That the respondent, after the letter of allotment dt. 20.05.2017, miserably failed to execute the builder buyer agreement, despite her continuous and numerous attempts and communications to get the same executed.
- f. It is germane to mention here that as per the said MOU, on 22.12.2016, i.e., the day of booking of the unit in the affordable housing scheme namely "**Expressway Towers**", the amount paid by her of Rs. 20,51,000/- had already accrued an interest of Rs. 14,40,308/- as per the clause 5 of the MOU dated 28.01.2013 and is still accruing till this day.
- g. That, despite the fact that she has already made a payment of Rs. 20,51,000/-, and the said payment has already accrued an interest of Rs. 26,91,474/- on the date of said demand letter, the respondent arbitrarily raised another illegal demand from the complainant dt. 12.05.2020, for **Rs. 10,20,856/-**, malafidely showing the payments so made by her as only Rs. 16,93,770/-.
- h. She visited the offices of the respondent numerous times to get the same executed, however, to her dismay, the respondent paid no heed to her requests and failed to execute the builder buyer agreement despite the payment of Rs. 20,51,000/- which is more than 10% of the total sale consideration of the unit.

- i. That it is extremely germane to mention here that the respondent, on receipt of the said letter of the complainant, duly issued its signed and stamped reply dt. 07.10.2022, acknowledging the refund request of the complainant and accepting their liability to issue refund of the same to her within 60 days of the said letter. That it is evident from the said letter that the respondent acknowledged her refund request and duly issued the said letter.
- j. That the conduct of the respondent has been malafide from the very inception of the project and has been trying to cheat her out of their hard-earned money. That as per the Affordable Housing Policy, 2013, each and every project has to be given possession within 4 years of such sanctions however, seeing the conduct of the respondent and the construction status of the project there is no hope that the respondent will be able to finish the project within the stipulated time period and she cannot be forced to wait indefinitely for the construction of the project when the conduct of the respondent is seen to be extremely malafide from the very beginning.
- k. That she should be compensated for the principal amount of INR 20,51,000/- paid to the respondent along with the prescribed rate of interest as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of each payment till the date of refund.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - a. To direct the respondent to refund the complainant amount of Rs. 20,51,000/- along with the prescribed rate of interest @ 18% from

the respective dates of payment till the date of realization in terms of  
**Clause 5 of the MOU;**

- b. To direct the respondent to pay Rs. 1,00,000/- towards litigation costs.
  - c. To direct the respondent to pay Rs. 2,00,000/- towards mental and physical harassment of the complainant.
5. On 01.09.2023 and 15.09.2023, the respondent was directed to file the reply within stipulated time period, but the respondent failed to comply with the orders of the authority. However, despite multiple opportunities, 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 vide order dated 17.11.2023.
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 complainant amount of Rs. 20,51,000/- along with the prescribed rate of interest @ 18% from the respective dates of payment till the date of realization in terms of Clause 5 of the MOU;

11. The complainant was allotted unit no. 1705, in tower - 4, in the project Expressway Tower, Sector- 109, Gurugram, Haryana by the respondent/builder for a total consideration of Rs. 27,14,626/- 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 calculate 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. 20,51,000/- and is always ready and willing to retain the allotted unit in question.

12. The complainant has mentioned clause 5 of the MOU wherein the respondent has talked about the eventuality where it shall refund the amount so received. The relevant part of the clause is reproduced below:

*"That in case the first party is unable to up bring the future project due any reason whatsoever within 12-15 months from the date of the MOU then, in that eventuality the first party shall pay back the amount so received from the second party along with simple interest calculated @18% per annum..."*

13. Bare reading of clause explains the eventuality. That it should pay back the amount so received if it is unable to bring the future project within stipulated time(12-15 months from the date of MOU). The authority examines the clause and as per documents available on record the respondent is under an obligation to pay back the amount. A refund request made by the complainant on 06.09.2022. The same has been duly taken on record by the respondent and it further assured to refund the fully paid up

amount vide letter dated 07.10.2022(at page 39 of complaint). The project is at standstill. The counsel for the respondent is not challenging the above-mentioned letter.

14. 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. Subsequently, as per documents on record it was under an obligation to refund the fully paid up amount.
15. As per clause 5 of the MOU dated 28.01.2013 and letter dated 07.10.2022, the respondent was under an obligation to refund fully paid up amount 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 along with interest from date of each payment till the actual realization of the amount.

**F. Directions of the authority**

16. 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. 20,51,000/- 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 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 and failing which legal consequences would follow.

17. Complaint stands disposed of.
18. File be consigned to registry.

  
(Sanjeev Kumar  
Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024

  
**HARERA**  
**GURUGRAM**