

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

Complaint no. :	5309 of 2022
Date of filing :	18.08.2022
Date of decision:	16.04.2024

<b>NAME OF THE BUILDER</b>	Ocean Seven Buildtech Pvt. Ltd.	
<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
CR/5309/2022	Sonia Vaid Vs. M/s Ocean Seven Buildtech Pvt. Ltd.	Adv. Himanshu Singh (Complainant)  Adv. Arun Kumar (Respondent)

<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>

**ORDER**

1. The present complaint was 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.

**A. Project and unit related details**

A

2. The details of the complaint, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount are given in the table below:

S.no.	Particulars	Details
1.	Project name and location	"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 other details	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 up to- 02.09.2024
8.	Allotment letter	09.03.2021 [Page 19 of complaint]
9.	Builder buyer agreement	Not executed
10.	Flat no.	902, Type I, tower 4 [Page 19 of complaint]
11.	Unit admeasuring	571.105 sq. ft. (carpet area) (Page 19 of the complaint)
12.	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</i>

		<i>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	Rs. 23,33,420/- [As alleged by the complainant at page 10 of complaint]
15.	Amount paid by the complainant	Rs. 8,83,785/- [As per SOA dated 14.01.2022 at page 23 of complaint]
16.	Surrender / Cancellation request by complainant seeking refund of the deposited amount	15.01.2022 [Page 24 of complaint]
17.	Occupation certificate	Not yet obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant have booked a unit in the project namely "Venetian" and was allotted unit bearing no. 902, tower no. 4. Thus, the complainant falls under the definition of 'allottee' under section 2(d) of the Act. The respondent was responsible to develop the present project and falls under the definition of 'promoter' as per section 2(zk) of the Act.
  - II. That the complainant booked a unit in the subject project vide application bearing no. 1645 and by paying Rs.1,16,671/- to the respondent as booking

- amount. Thereafter, the complainant was allotted a unit no. 902 in tower 4 having carpet area of 571.105 sq. ft. along with balcony area of 98 sq. ft. on 09.03.2021 after the draw of lots conducted on 09.03.2021. The complainant was issued an allotment letter along with demand of Rs.4,72,518/- and the said demand was paid by the complainant.
- III. That the complainant had paid a sum of Rs.8,83,785/- to the respondent out of total sale consideration of Rs.23,33,420/- before entering into BBA which is clear violation of section 13 of the Act. The BBA was never executed between the respondent and the complainant in respect of the subject unit. The respondent failed to execute the BBA even after accepting substantial amount of payments from the complainant. The respondent kept on issuing demand letters raising next instalment however, the respondent had nothing to show for such demands as there was no progress at the site.
- IV. That the complainant has been deceived by the respondent who gave false assurance to the allottees that the project will begin construction soon. The fact is that the construction has not started yet, the respondent has cheated the complainant from their hard earned money.
- V. That the complainant should be compensated as the complainant had to bear higher GST charge against the amount for the instalments of the unit. The respondent was charging GST of 8% upon the complainant even after the notification dated 01.04.2019 as per which not more than 1% of the amount can be charged as GST. As per the said notification, only those projects which launched and started construction before 01.04.2019 are liable to bear 8%. However, in case of the present project, the construction had not begun even in the late 2020. Thus, charging GST is illegal and unjustified.

VI. There is failure on part of the respondent to handover possession of the subject unit to the complainant within the reasonable period and thus, the present complaint for seeking the following relief.

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

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

- I. Direct the respondent to refund the entire paid-up amount along with interest at prescribed rate from the date of receipt of instalments of payment till the date of realisation.
  - II. To conduct an inquiry into fraudulent acts of the respondent and cancel the RERA registration for the project in question.
  - III. To impose a penalty amounting to 5% of the project cost under section 60 of the Act on account of violation of section 4 of the Act.
  - IV. Direct the respondent to pay Rs.1,25,000/- for legal cost.
5. During 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**

6. 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.
- 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.
7. 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**
8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.I Territorial jurisdiction**
9. 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.

**E.II Subject matter jurisdiction**

10. 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.

11. 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.
12. 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."*

13. 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.**

14. 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."*

15. The authority observes that no BBA has been executed inter se parties and the respondent's plea in this regard is completely devoid of merits. Without prejudice to the aforesaid view, 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 Vs. 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.

16. 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.**

17. 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.
18. The authority observes that the objection raised by the respondent are vague and false as the respondent has not specified as to what documents have been 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.**

19. The complainant was allotted a unit bearing no. 902, 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. The builder buyer agreement has not been executed inter se parties in respect of the subject unit so far. As per clause 1(iv) of the Affordable Housing Policy, 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. Further, 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 letter dated 15.01.2022.
20. 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, it is provided 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."*

21. 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.
22. Further, as per amendment dated 09.07.2018 in Affordable Housing 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.*

23. 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.
24. 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 and the Act of 2016.
25. Hence, the respondent/promoter is directed to refund the entire paid-up amount of Rs.8,83,785/- 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. (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 To conduct an inquiry into fraudulent acts of the respondent and cancel the RERA registration for the project in question.**
- G.III To impose a penalty amounting to 5% of the project cost under section 60 of the Act on account of violation of section 4 of the Act.**
26. With respect to the aforesaid reliefs, the authority has already initiated suo-moto proceedings bearing no. CR/1104/2023 against the respondent. Thus,

the aforesaid reliefs are not being deliberated by the authority in the present complaint and shall be dealt separately by the authority.

**G.IV Direct the respondent to pay Rs.1,25,000/- for legal cost.**

27. 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**

28. 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 of Rs. 8,83,785/- 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 from the date of each payment till the actual realization of the amount.





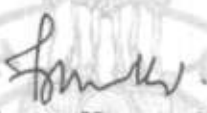
**HARERA**  
**GURUGRAM**

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- 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.
29. The complaints stand disposed of.
30. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.04.2024

**HARERA**  
**GURUGRAM**