

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

Date of Order: 24.07.2024

Name of the Builder		Ocean Seven Buildtech Pvt. Ltd.	
Project Name		Expressway Towers	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/7964/2022	Rameshwar Singh V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
2.	CR/7973/2022	Shashi Saini V/s M/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
3.	CR/8019/2022	Malati Rani Mandal V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
4.	CR/8020/2022	Sachin Poonia V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
5.	CR/8026/2022	Manoj Kumar V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
6.	CR/8030/2022	Parveen Bali and Rakesh Kumar Bali V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainants) Arun Yadav (Respondent)
7.	CR/8034/2022	Rishikesh Singh V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
8.	CR/8098/2022	Sushma S. Chaudhary and Sunil Kumar Chaudhary V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainants) Arun Yadav (Respondent)
9.	CR/8099/2022	Ompal V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)

10.	CR/8102/2022	Sonu Verma V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
11.	CR/8104/2022	Ramesh Kumar Katyal V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
12.	CR/8105/2022	Rishubh Mathur V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
13.	CR/8106/2022	Sachin Kumar Goel V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
14.	CR/8107/2022	Vinay Tomar and Dinesh Kumar V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainants) Arun Yadav (Respondent)
15.	CR/8139/2022	Sandip Kumar V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 15 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Expressway Towers" at Sector 109, Gurugram being developed by the respondent/promoter i.e., Ocean Seven Buildtech Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Expressway Towers" at Sector 109, Gurugram
Possession clause in Affordable Housing Policy- 1 (iv) <i>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.</i>
1. Date of sanction of building plans- Date of sanction of building plans is 26.09.2016 as per information obtained from the planning branch.
2. Date of grant of environmental clearance- Date of grant of environmental clearance is 30.11.2017 as per information obtained from the planning branch.
3. Due date of handing over of possession- 30.05.2022 (inadvertently mentioned as 26.03.2020 on proceedings dated 08.05.2024) (The due date has been calculated as 4 years from date of grant of environmental clearance i.e., 30.11.2017 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020).
4. Occupation certificate- Not obtained
5. DTCP License no. 6 of 2016 dated 16.06.2016- Shree Bhagwan is the licensee for the project as mentioned in land schedule of the project.
6. RERA registration – 301 of 2017 dated 13.10.2017 valid upto 12.10.2021.



Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/7964/2022 Rameshwar Singh V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 16.01.2023	Reply received on 31.01.2024	1107, Tower 6, 11 th Floor (Page 25 of complaint)	25.05.2019	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (page 29 of complaint) AP: Rs.26,78,713/- (As per ledger account on page 63 of complaint)	DPC and Possession
2.	CR/7973/2022 Shashi Saini V/s M/s Ocean Seven Buildtech Pvt. Ltd. DOF- 16.01.2023	Reply received on 31.01.2024	507, Tower 1, 5 th Floor (Page 23 of complaint)	26.12.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.12,62,500/- + taxes (page 23 of complaint) AP: Rs.13,22,469/- (As per demand letter on page 45 of complaint and receipt on page 47 of complaint)	DPC and Possession
3.	CR/8019/2022 Malati Rani Mandal V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.2024	902, Tower 4, 9 th floor (Page 26 of complaint)	06.06.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per BBA on page 26 of complaint) AP: Rs.27,18,249/- (As per ledger account on page 58 of complaint)	DPC and Possession



4.	CR/8020/2022 Sachin Poonia V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.20 24	1508, Tower 5, 15 th floor (Page 26 of complaint)	08.07.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,26,000/- + taxes (As per BBA on page 26 of complaint) AP: Rs.23,83,094/- (As per demand letter on page 65 of complaint and receipt dated 27.01.2020 on page 74 of complaint)	DPC and Possession
5.	CR/8026/2022 Manoj Kumar V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.20 24	708, Tower 1, 7 th Floor (Page 26 of complaint)	22.03.2021	30.05.2022 Offer of possession- Not offered	TSC: Rs.13,30,500/- + taxes (As per BBA on page 26 of complaint) AP: Rs.13,87,046/- (As per demand letter on page 55 of complaint and payment acknowledgemen t on page 56 of complaint)	DPC and Possession
6.	CR/8030/2022 Parveen Bali and Rakesh Kumar Bali V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.20 24	1707, Tower 6 (Page 37 of complaint)	Not executed	30.05.2022 Offer of possession- Not offered	TSC: Rs. 26,29,500/- + taxes (As per demand letter on page 39 of complaint) AP: Rs. 27,18,249/- (As per demand letter on page 39 of complaint and payment confirmation on page 48 of complaint)	DPC and Possession

7.	CR/8034/2022 Rishikesh Singh V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.20 24	802, Tower 4, 8 th floor (Page 25 of complaint)	23.06.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per BBA on page 29 of complaint) AP: Rs.26,78,249/- (As per payment receipts annexed with the complaint)	DPC and Possession
8.	CR/8098/2022 Sushma S. Chaudhary and Sunil Kumar Chaudhary V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.20 24	7, Tower 6 (Page 38 of complaint)	Not executed	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per application form on page 31 of complaint) AP: Rs.26,81,469/- (As per demand letter on page 40 of complaint and email dated 13.07.2020 on page 48 of complaint)	DPC and Possession
9.	CR/8099/2022 Ompal V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.20 24	908, Tower 4, 9 th floor (Page 29 of complaint)	24.07.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per BBA on page 29 of complaint) AP: Rs.24,84,495/- (As per ledger account on page 63 of complaint)	DPC and Possession

10.	CR/8102/2022 Sonu Verma V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.20 24	1304, Tower 5 (Page 17 of complaint)	Not executed	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,26,000/- + taxes (page 19 of complaint) AP: Rs.27,14,626/- (As per reminder letter and payment acknowledgemen t annexed with the complaint on page 19-21 of complaint)	DPC and Possession
11.	CR/8104/2022 Ramesh Kumar Katyal V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.20 24	602, Tower 3, 6 th floor (Page 24 of complaint)	15.11.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per BBA on page 24 of complaint) AP: Rs.27,18,243/- (As per demand letter and payment receipt annexed with the complaint on page 54-56 of complaint)	DPC and Possession
12.	CR/8105/2022 Rishubh Mathur V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.20 24	1903, Tower 3, 19 th Floor (Page 29 of complaint)	28.10.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (page 29 of complaint) AP: Rs.27,24,962/- (As per ledger account on page 61 of complaint)	DPC and Possession

13.	CR/8106/2022 Sachin Kumar Goel V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.2024	1908, Tower 3, 19 th Floor (Page 24 of complaint)	23.10.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,26,000/- + taxes (page 24 of complaint) AP: Rs.27,35,543/- (As per demand letter on page 54 and payment receipt annexed with the complaint on page 58-59 of complaint)	DPC and Possession
14.	CR/8107/2022 Vinay Tomar and Dinesh Kumar V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 27.01.2023	Reply received on 31.01.2024	1206, Tower 4, 12 th floor (Page 25 of complaint)	22.07.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- + taxes (As per BBA on page 25 of complaint) AP: Rs.27,18,255/- (As per demand letter on page 55 and email dated 20.10.2020 on page 57 of complaint)	DPC and Possession
15.	CR/8139/2022 Sandip Kumar V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 25.01.2023	Reply received on 31.01.2024	505, Tower 7, 5 th floor (Page 25 of complaint)	26.09.2017	30.05.2022 Offer of possession- Not offered	TSC: Rs.13,30,500/- + taxes (As per BBA on page 25 of complaint) AP: Rs.13,67,297/- (As per ledger account on page 63 of complaint)	DPC and Possession

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOF- Date of filing complaint

TSC- Total Sale Consideration

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant(s) against the promoter on account of violation of the builder buyer's agreement executed

between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/7964/2022 titled as Rameshwar Singh V/s Ocean Seven Buildtech Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.
7. On proceedings dated 08.05.2024, the counsel for the complainant(s) has submitted that "*the complainant(s) is/are seeking delay possession charges and directions for handing over of possession after obtaining an occupation certificate. The rest of the reliefs are not being pressed as the same are being addressed in the suo motu proceedings before the authority.*" In view of the above, the authority is proceeding to decide only the main relief sought by the complainant(s) in the above said complaints i.e., delay possession charges and possession on the basis of documents available on record as well as submission made by the parties.
 - A. Project and unit related details**
8. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:



CR/7964/2022 titled as Rameshwar Singh V/s Ocean Seven Buildtech Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Expressway Towers", Sector 109, Gurugram
2.	Nature of the project	Affordable Housing
3.	DTCP license no. and validity status	6 of 2016 dated 16.06.2016
4.	RERA Registered/ not registered	301 of 2017 dated 13.10.2017 valid upto 12.10.2021
5.	Allotment Letter	20.05.2017 (page 17 of complaint)
6.	Unit no.	1107, Tower 6, 11 th Floor (Page 25 of complaint)
7.	Unit area admeasuring	645 sq. ft. (carpet area), 99 sq.ft balcony area (Page 25 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	25.05.2019
9.	Possession clause	5.2 Possession Time <i>"The Company shall sincerely endeavor to complete construction of the said unit within 5 years from the date of receiving of licence (commitment period), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). However company completes the construction prior to the period of 5 years the Allottee shall not raise an in taking the possession after payment of remaining sale price and other charges stipulated in the to Sell. The Company on obtaining certificate for occupation and use by the Competent Authority hand over the said unit to the Allottee for his/her/their occupation and use, subject to the All complied with all the terms and conditions of the said Policy and Agreement to Sell and payments made as per Payment Plan."</i>
10.	Possession clause in Affordable Housing Policy	1 (iv) All such projects shall be required to be necessarily completed within 4 years



		from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
11.	Date of environmental clearance	30.11.2017 (as per information obtained from planning branch)
12.	Date of approval of building plans	26.09.2016 (as per information obtained from planning branch)
13.	Due date of possession	30.05.2022 (Calculated as 4 years from date of grant of environmental clearance i.e., 30.11.2017 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
14.	Total sale consideration	Rs.26,29,500/- + taxes (page 29 of complaint)
15.	Amount paid by the complainant	Rs.26,78,713/- (As per ledger account on page 63 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

9. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. 1107, Tower 6 having 645 sq. ft. carpet area and 99 sq. ft. balcony area in project of respondent named "Expressway Towers" at Sector 109, Gurugram, under the Affordable Housing Policy, 2013 vide allotment letter dated 20.05.2017. Thereafter, an builder buyer agreement dated 25.05.2019 was executed between the parties.

- II. That the respondent had unilaterally, unlawfully and arbitrarily extended the due date under the agreement by going beyond the Affordable Housing Policy, 2013, which, under no circumstance whatsoever, be accepted.
- III. That under the Sec 1(iv) of the Affordable Housing Policy, 2013, the possession of the unit was to be delivered within 4 years from the approval of building plan or grant of environmental clearance, whichever is later.
- IV. That till date, the possession has not been offered and the project is far from being completed. It is a matter of record that no occupancy certificate has been applied till date and the essential services are incomplete in the project.
- V. That the respondent failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the concerned laws, rules and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project as and when inquired by the complainant.
- VI. That under proviso of section 18(1) of the Act, the respondent is bound to make the payment of interest on the amount deposited by the complainant till the actual handover of possession.

C. Relief sought by the complainant:

10. The complainant has sought following relief(s):
 - i. Direct the respondent to handover possession of the unit, to execute conveyance deed and to pay delay possession charges as per the Act.
11. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

12. The respondent has contested the complaint on the following grounds.

- i. That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.
- ii. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments.
- iii. That starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively. This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent. The suspension of the license and freezing of accounts, starting from Feb 2023 till date, have created a zero-time scenario for the respondent. Further, there is no delay on the part of the respondent project as it is covered under clause number 5.5 force Majeure, which is beyond control of the respondent.
- iv. That the final EC is CTE/CTO which has been received by the respondent in February 2018. Hence the start date of project is Feb 2018 and rest details are as follows:

Covid and NGT Restrictions		
Project completion Date	Feb-22	
Covid lock down waiver	18 months	
NGT stay (3 months approx. for every year)i.e. 6*3	18 months	
Total Time extended to be extended (18+18) months	36 months	
Accounts freezed & license suspended further time to be extended till the unfreezing of the accounts i.e. Feb- Nov 2023 (10 months)	Feb 2023 till date	
	Nov-23	

Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	Nov-25	
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As per the table given above, the final date for the completion of construction is Feb 25 in case the accounts are unfreezed by the competent authority on the date of filing this reply. From Feb 2023, the license has been suspended and accounts have been freezed by the DTCP Chandigarh and HRERA Gurugram.

13. 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 parties.

E. Jurisdiction of the authority

14. 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

15. 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

16. 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.

17. 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.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force majeure.

18. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, major spread of Covid-19 across worldwide, suspension of license by the DTCP, Chandigarh and freezing of accounts by HRERA Gurugram etc. which is beyond the control of the respondent and are covered under clause 5.5 of the agreement. The respondent has further submitted that suspension of the license and freezing of accounts, starting from Feb 2023 till date have created a zero-time scenario for the respondent. Furthermore, the final EC is CTE/CTO which has been received by the respondent in February 2018, hence the start date of project is Feb 2018. However, all the pleas advanced in this regard are devoid of merits. As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed 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 this 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. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession was 30.05.2022. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Secondly, the licence of the project of the respondent was suspended by DTCP, Haryana vide memo dated 23.02.2023, due to grave violations made by it in making compliance of the terms and conditions of the licence and thereafter due to several continuing violations of the provisions of the Act, 2016 by the respondent, in view to protect the interest of the allottees, the bank account of the respondent related to the project was freezed by this Authority vide order dated 24.02.2023. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

19. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of

any dispute. 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.

20. 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. Further, 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 judgement 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. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right 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 complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the reliefs sought by the complainant:

G. I Direct the respondents to handover possession of the unit and to pay delay possession charges as per the Act.

21. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

22. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licenced under it and the same is reproduced as under for ready reference:

1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

23. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed 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 this 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. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.05.2022.

24. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been 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]

(1) 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.

25. The legislature in its wisdom in the subordinate legislation under the provision of 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.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 24.07.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the respondent/promoter shall be

necessarily required to complete the construction of the project within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Therefore, in view of the findings given above, the due date of handing over of possession was 30.05.2022. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
31. Further, as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In

view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

H. Directions of the authority

32. Hence, the authority hereby passes this order and issue 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/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 30.05.2022 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable,



- within three months after obtaining occupation certificate from the competent authority.
- iv. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the apartment buyer's agreement or provided under the Affordable Housing Policy, 2013.
 - vi. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 34. The complaints stand disposed off.
 35. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.07.2024