BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 17.09.2024

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/1678/2023	Seema Raghav Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Akhand Partap Singh (Complainant) Adv. Arun Kumar (Respondent)
2.	CR/1676/2023	Sheela Devi Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Akhand Partap Singh (Complainant) Adv. Arun Kumar (Respondent)
3.	CR/1674/2023	Sunita Chopra Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Akhand Partap Singh (Complainant) Adv. Arun Kumar (Respondent)
4.	CR/1644/2023	Meenakshi Bisth Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Ashish Budhiraja (Complainant) Adv. Arun Kumar (Respondent)

CORAM:

Shri Vijay Kumar Goyal **Member**

Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of 4 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 allotment letter, 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*** *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.*

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Date of request of refund by the complainant	Relief sought
1.	CR/1678/2023 Seema Raghav Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.05.2023 **RR:** Not Filed	0808, tower 1, 556.280 sq. ft. (carpet area) [Page 16 of complaint]	**AL:-** 09.03.2021 [Page 16 of complaint] BBA Not executed	Cannot be ascertained	**TC:** 23,00,000/- **AP:** 1,36,506/- [As alleged by the complainant at page 14 of complaint]	11.10.2022 [Page 18 of complaint]	Refund along with interest and compensation
2.	CR/1676/2023 Sheela Devi Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.05.2023	101, tower 2, 556.280 sq. ft. (carpet area) [Page 17 of	**AL:-** 09.03.2021 [Page 17 of complaint] **BBA** Not executed	Cannot be ascertained	**TC:** 23,00,000/- **AP:** 5,73,207/- [As alleged by the complainant	11.10.2022 [Page 23 of complaint]	Refund along with interest and compensation

	RR: Not Filed	compla int]			at page 15 of complaint]		
3.	CR/1674/2023 Sunita Chopra Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.05.2023 **RR:** Not Filed	1507, tower 2, 571.10 5 sq. ft. (carpet area) [Page 15 of compla int]	**AL:-** 09.03.2021 [Page 16 of complaint] **BBA** Not executed	Cannot be ascertained	**TC:** 23,00,000/- **AP:** 8,83,785/- [As alleged by the complainant at page 14 of complaint]	05.05.2023	Refund along with interest and compensa tion
4.	CR/1644/2023 Meenakshi Bisth Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 13.04.2023 **RR:** Not Filed	1803, tower 3, 571.10 5 sq. ft. (carpet area) [Page 15 of compla int]	**AL:-** 09.03.2021 [Page 15 of complaint] **BBA** Not executed	Cannot be ascertained	**TC:** 23,33,420/- **AP:** 5,89,189/- [As alleged by the complainant at page 11 of complaint]	26.10.2022 (Page No. 22 of the complaint)	Refund along with interest and compensa tion

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
BBA	Builder Buyer's Agreement
AL	Allotment Letter

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/1678/2023*** titled as ***Seema Raghav 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/1678/2023 *titled as* ***Seema Raghav Vs. M/s Ocean Seven Buildtech Pvt. Ltd.***

S. N.	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	**103 of 2019 dated 05.09.2019**
	License validity status	**Valid upto 04.09.2024**
	Name of licensee	Shree Ratan Lal and others in collaboration with M/s Ocean Seven Buildtech Pvt. Ltd.
5.	Building plan approval dated	07.02.2020
6.	Environment clearance dated	Not obtained till date
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 16 of complaint]
9.	Builder buyer agreement	Not executed

10.	Flat no.	808, tower 1 [Page 16 of complaint]
11.	Unit admeasuring	556.280 sq. ft. of carpet area and 90 sq. ft. balcony area (Page 15 of the complaint)
12.	Possession clause as per Affordable housing policy, 2013	***1(IV) of the Affordable Housing Policy, 2013*** *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*
13.	Due date of possession	Cannot be ascertained
14.	Total sale price of the flat	Rs.23,00,000/- [As alleged by the complainant at page 14 of complaint]
15.	Amount paid by the complainant	Rs.1,13,506/- [As alleged by the complainant at page 14 of complaint]
16.	Surrender/Cancellation by the complainant through legal notice dated	11.10.2022 [page 18 of complaint]

B. Facts of the complaint

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

I. That the complainant is a law-abiding citizen. The complainant having the need for residence, was desirous of buying an apartment for him and his family and therefore applied for an apartment in a project "The Venetian" at Sector-70, Gurugram being developed by the respondent. That it is

pertinent to mention that the defendant applied for the apartment through an advertisement by the respondent.

II. That the respondent company are involved in Real estate activities with own or leased property which includes buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc.

III. That as the respondent was developing a project namely "The Venetian" at Sector-70, Gurugram, in which complainants herein made an application for the allotment of flat. Subsequently, the payment of Rs.1,13,506/- were made by the complainant to the respondent.

IV. That the complainant even after paying the application fee had to wait till 09.03.2021 to receive the letter of allotment. Moreover, the respondents did not execute the buyer's agreement. That vide letter of allotment, the complainants was informed that the flat no. 808 in tower no. 1, 2 BHK (Type 1), having a carpet area of approx. 556.280 sq. ft. and having balcony area 90 sq. ft. has been allotted to him.

V. That after making the instalments, the complainants made follow-up calls and enquired as to how & by when the respondents will complete the project. That the respondents neither replied to the said enquiry made by the complainants nor intimated the complainants about the progress of construction. That the respondents have not even executed the BBA despite of receiving the sale consideration.

VI. That having received no updates and facing mental agony and harassment due to the acts and conduct of the respondent and having left with no remedy, the complainant through their counsel sent a legal notice dated

11.10.2022 wherein the complainants sought a refund of the entire amount paid along with interest @ 12% Per annum from the date of payment to the date of refund. Even till date, the project is far away from its completion as the construction has not yet started.

VII. That the complainant seeks the liberty to rely on the pronouncement by the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** has observed that the unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the court/tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

VIII. That, therefore, the promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per

agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed

IX. That in view of delay in construction and failure to deliver the property, the complainant is entitled to withdraw and accordingly is withdrawing from the allotment and further seeks the refund of an amount of Rs.1,13,506/- along with interest and compensation as per section 18 of the Real Estate (Regulation and Development) Act, 2016.

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 an amount of Rs.50,000/- as litigation expenses.

8. The present complaint was filed on 05.05.2023. On 27.02.2024, 19.12.2023, 2111.2023, and 26.09.2023, Shri Arun Yadav Advocate, appeared on behalf of the respondent and requests for a sought short adjournment for filing of reply. The said request was allowed, and the respondent was directed to file the reply within stipulated time period. Despite specific direction it has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding filing written reply. In view of the

conduct of the respondent, on 17.09.2024, the authority is left with no option but to striking off the defence of the respondent.

9. 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

10. 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

11. 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

12. 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.

13. 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.

14. 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."*

15. 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.

E. Findings on the relief sought by the complainant.

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

16. The complainant was allotted a unit bearing no. 808, in Tower-1, having carpet area of 556.280 sq. ft. along with balcony with area of 90 sq. ft. in the project of respondent named "Venetian" at Sector 70, Gurugram under the Affordable Housing Policy, 2013 vide booking application form 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.1,13,506/- 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 legal notice dated 11.10.2022.

17. 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 licencee 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".

18. In the present matter, the subject unit was surrendered by the complainant-allottee vide legal notice dated 11.10.2022 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.

19. 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 licencee 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 licencee will start the construction only after receipt of environmental clearance from the competent authority.*
> ***The licencee will start receiving the further installments only once the environmental clearance is received. Further, if the licencee, fail to get environmental clearance even after one year of holding of draw, the licencee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."***

20. In this regard, the authority observes that as per clause 5(iii)(b) of the Affordable Housing Policy, 2013, the licencee 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.

21. 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.

22. 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.

23. 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.

24. 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., @11% 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.

E.II Direct the respondent to pay an amount of Rs.50,000/- as litigation expenses.

25. 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.

F. Directions of the authority

26. 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:

i. 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., @11.10% 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).

27. 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.

28. The complaints stand disposed of.

29. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.09.2024