

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**
Date of decision: 03.09.2024

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/5289/2022	Nipun Sharma Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Himanshu Singh (Complainant) Adv. Arun Kumar (Respondent)
2.	CR/5300/2022	Sapna Vaid Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Himanshu Singh (Complainant) Adv. Arun Kumar (Respondent)
3.	CR/6448/2022	Rajesh Jindal स. व. जयल Vs. M/s Ocean Seven Buildtech Private Limited	Adv. Arun Bansal (Complainant) Adv. Arun Kumar (Respondent)
4.	CR/6812/2022	Priyanka Kumari Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
5.	CR/7257/2022	Sunita Shukla Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
6.	CR/7258/2022	Abhishek Ranjan Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
7.	CR/7785/2022	Raman Deep Kaur Vs. M/s Ocean Seven Buildtech Private Limited	Complainant in person Adv. Arun Kumar (Respondent)
8.	CR/760/2023	Aman Kathuria Vs. M/s Ocean Seven Buildtech Private Limited	Adv. B.L Jangra (Complainant) Adv. Arun Kumar (Respondent)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of 8 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 buyer's agreement	"5.2 Possession Time <i>The Company shall sincerely endeavor to complete the construction and offer the possession of the said unit within five years from the date of the receiving of license ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). However in case the Company completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Agreement to Sell. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to Sell and payments made as per Payment Plan."</i>
Possession clause as per Affordable Housing Policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>

S. No.	Complaint no., Case title, Date of filing	Unit no.	Allotment Letter And	Due date of possession	Total sale consideration and	Date of request of	Relief sought
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	of complaint and reply status	and size	BBA		Total amount paid by the complainant in Rs.	refund by the complainant	
1.	CR/5289/2022 Nipun Sharma Vs. M/s Ocean Seven Buildtech Private Limited DOF: 18.08.2022 RR: Not filed	006, ground floor, tower 5 571.10 5 sq. ft. (carpet area) [Page 19 of compla int]	AL:- 09.03.2021 [Page 19 of complaint] BBA Not executed	Cannot be ascertained	TC: 23,33,420/- [As alleged by the complainant at page no. 10 of complaint] AP: 8,83,785/- [As per ledger dated 15.01.2022 at page no. 23 of complaint]	14.01.2022 [Page no. 24 of complaint]	Refund along with interest and compensa tion
2.	CR/5300/2022 Sapna Vaid Vs. M/s Ocean Seven Buildtech Private Limited DOF: 18.08.2022 RR: Not filed	1102, 11 th floor, tower 4 571.10 5 sq. ft. (carpet area) [Page 19 of compla int]	AL:- 09.03.2021 [Page 19 of complaint] BBA Not executed	Cannot be ascertained	TC: 23,33,420/- [As alleged by the complainant at page no. 10 of complaint] AP: 8,83,785/- [As per ledger dated 03.06.2022 at page no. 23 of complaint]	14.01.2022 [Page 24 of complaint]	Refund along with interest and compensa tion
3.	CR/6448/2022 Rajesh Jindal Vs. M/s Ocean Seven Buildtech Private Limited DOF: 12.10.2022 RR: Not filed	1608, tower 4 556.28 0 sq. ft. (carpet area) [Page 22 of compla int]	AL:- 09.03.2021 [Page 16 of complaint] BBA 22.02.2021 [Page 19 of complaint]	Cannot be ascertained	TC: 22,70,120/- [As per sale consideration mentioned in BBA at page 22 of complaint] AP: 8,59,811/- [As alleged by the complainant]	23.03.2022 [Page 29 of complaint]	Refund along with interest and compensa tion



					at page 13 of complaint]		
4.	CR/6812/2022 Priyanka Kumari Vs. M/s Ocean Seven Buildtech Private Limited DOF: 04.11.2022 RR: Not filed	1407, tower 5 571.10 5 sq. ft. (carpet area) [Page 13 of complaint]	AL:- 09.03.2021 [Page 13 of complaint] BBA Not executed	Cannot be ascertained	TC: 23,33,420/- AP: 8,83,775/- [As alleged by the complainant at page 16 of complaint]	18.01.2022 [Page 28 of complaint]	Refund along with interest and compensation
5.	CR/7257/2022 Sunita Shukla Vs. Ocean Seven Buildtech Private Limited DOF: 14.11.2022 RR: Not filed	105, tower 4 556.28 0 sq. ft. (carpet area) [Page 13 of complaint]	AL:- 09.03.2021 [Page 13 of complaint] BBA Not executed	Cannot be ascertained	TC: 22,70,120/- AP: 8,59,811/- [As alleged by the complainant at page 7 of complaint]	19.01.2022 [Page 18 of complaint]	Refund along with interest and compensation
6.	CR/7258/2022 Abhishek Ranjan Vs. Ocean Seven Buildtech Private Limited DOF: 14.11.2022 RR: Not filed	508, tower 2 556.28 0 sq. ft. (carpet area) [Page 13 of complaint]	AL:- 09.03.2021 [Page 13 of complaint] BBA Not executed	Cannot be ascertained	TC: 22,70,120/- AP: 8,59,811/- [As alleged by the complainant at page 7 of complaint]	06.10.2022 [Page 21 of complaint]	Refund along with interest and compensation
7.	CR/7785/2022 Raman Deep Kaur Vs. Ocean Seven Buildtech Private Limited	1405, tower 4 556.28 0 sq. ft. (carpet area)	AL:- 09.03.2021 [Page 23 of complaint] BBA 29.06.2021	Cannot be ascertained	TC: 22,70,120/- [As per clause 4.1 of the BBA at page 40 of complaint]	14.10.2022 [Page 29 of complaint]	Refund along with interest and compensation

	DOF: 19.12.2022 RR: Not filed	[Page 37 of complaint]	[Page 35 of the complaint]		AP: 11,46,416/- [As alleged by the complainant at page 7 of complaint]																
8.	CR/760/2023 Aman Kathuria Vs. Ocean Seven Buildtech Private Limited DOF: 01.03.2023 RR: Not filed	1206, 12 th floor, in tower 1 571.10 5 sq. ft. (carpet area) [Page 18 of complaint]	AL:- 09.03.2021 [Page 18 of complaint] BBA Not executed	Cannot be ascertained	TC: 23,33,420/- AP: 8,83,785/- [As alleged by the complainant at page 13 of complaint]	25.03.2022 [Page 24 of complaint]	Refund along with interest and compensation														
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <table border="1"> <thead> <tr> <th>Abbreviation</th> <th>Full form</th> </tr> </thead> <tbody> <tr> <td>DOF</td> <td>Date of filing of complaint</td> </tr> <tr> <td>RR</td> <td>Reply received by the respondent</td> </tr> <tr> <td>TC</td> <td>Total consideration</td> </tr> <tr> <td>AP</td> <td>Amount paid by the allottee/s</td> </tr> <tr> <td>BBA</td> <td>Builder Buyer's Agreement</td> </tr> <tr> <td>AL</td> <td>Allotment Letter</td> </tr> </tbody> </table>								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
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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/5289/2022** titled as **Nipun Sharma 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/5289/2022 titled as Nipun Sharma 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 License validity status	103 of 2019 dated 05.09.2019 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 no. 19 of complaint]
9.	Builder buyer agreement	Not executed
10.	Unit no.	006, ground floor, tower 5 [Page no. 19 of complaint]
11.	Unit admeasuring	571.105 sq. ft. of carpet area and 98 sq. ft. balcony area (Page no. 19 of the complaint)
12.	Possession clause as per Affordable housing policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project</i>
13.	Due date of possession	Cannot be ascertained



14.	Total sale price of the flat	Rs.23,33,420/- [As alleged by the complainant at page no. 10 of complaint]
15.	Amount paid by the complainant	Rs.8,83,785/- [As per ledger dated 15.01.2022 at page no. 23 of complaint]
16.	Surrender/Cancellation by the complainant through letter dated	14.01.2022 [Page no. 24 of complaint]

B. Facts of the complaint

6. 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. 006, ground floor, in tower no. 5. 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. 1640 and by paying Rs.1,16,671/- to the respondent as booking amount. Thereafter, the complainant was allotted a unit no. 006 in tower 5 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: -

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. 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.

8. The present complaint was filed on 18.08.2022. On 28.07.2023, the respondent was direct to file the reply within stipulated time period, but the respondent failed to comply with the orders of the authority. However, despite a lapse of one and half year from the date of filing and more than seven months from the date of publication of notice on the newspapers, the respondent has failed to file reply within the stipulated timeframe. In view of the conduct of the respondent, on 08.12.2023, 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. 006, ground floor, in Tower-5 having carpet area of 571.105 sq. ft. along with balcony with area of 98 sq. ft. in the project of respondent named "Venetian" at Sector 70, Gurugram under the Affordable Housing Policy, 2013 vide allotment letter dated 09.03.2021. Thereafter, builder buyer agreement was not executed between the complainant and respondent in respect of the subject unit. As per clause 1(iv) of the policy of 2013, all projects under the said policy shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Thus, the possession of the unit was to be offered within 4 years from the approval of building plans (07.02.2020) or from the date of environment clearance (not obtained yet). Therefore, the due date of possession cannot be ascertained. As per record, the complainant has paid an amount of Rs.8,83,785/- to respondent. Due to failure on the part of the



respondent in obtaining environment clearance from the concerned authority and inordinate delay on part of the respondent to start construction of the project in question, the complainant has surrendered the unit/flat vide letter dated 14.01.2022.

17. In CR/6448/2022 and CR/7785/2022, the buyer's agreement was executed inter-se parties on 22.02.2021 and 29.06.2021 respectively. Clause 5.2 talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

"5.2 Possession Time

The Company shall sincerely endeavor to complete the construction and offer the possession of the said unit within five years from the date of the receiving of license ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). However in case the Company completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Agreement to Sell. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to sell and payments made as per Payment Plan."

18. The Authority observes that since the respondent/promoter has lunched the project under the Affordable group housing policy, 2013 which was introduced by the state Government on 19.08.2013. Clause 1(IV) of the Affordable Group Housing Policy, 2013 clearly mentions that 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. The respondent /promoter is obligated to act under the provisions of the said policy, 2013 only. Therefore, the said possession clause 5.2 of the buyer's agreement is hereby set-aside by the Authority and the due date of possession shall be calculated as per clause 1(IV) of the Affordable Group Housing Policy, 2013. In the above mentioned cases, the

respondent is failed to 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.

19. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision regarding surrender of the allotted unit by the allottee has been laid down and the same is reproduced as under:

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

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".

20. In the present matter, the subject unit was surrendered by the complainant-allottee vide letter dated 14.01.2022 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.
21. However, it has come to the notice of the authority that the respondent has failed to obtain environmental clearance from the competent authority till date. It is pertinent to mention here that as per the clause 5 (iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015 provides that if the licensee fails to get environmental clearance even one year of holding draw, the licensee is liable to refund the amount deposited by the applicant along with an interest of 12%, if the allottee so desires. The relevant provision is reproduced below for ready reference:
- "The flats in a specific project shall be allotted in one go within four months of the sanction of building plans. In case, the number of applications received is less than the number of sanctioned flats, the allotment can be made in two or more phases. However, the licensee will start the construction only after receipt of environmental clearance from the competent authority.
The licensee will start receiving the further installments only once the environmental clearance is received. Further, if the licensee, fail to get environmental clearance even after one year of holding of draw, the licensee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."*
22. 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.
23. Further, as per amendment dated 09.07.2018 in Affordable Group 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.

24. 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.
25. 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.
26. Hence, the respondent/promoter 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. (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 To conduct an inquiry into fraudulent acts of the respondent and cancel the RERA registration for the project in question.**
- E.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.**

27. 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.

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

28. 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

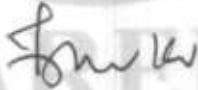
29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- 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).
30. 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.
31. The complaints stand disposed of.
32. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2024