

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

Complaint no. : 5498 of 2023
Date of complaint : 12.12.2023
Date of order : 18.09.2024

Govind Mundra and Shikha Mundra,
Both R/o: - Tower E, Flat No. 801, Dhoot Time
Residency, Near Paras Trinity, Sector 63, Gurugram.

Complainants

Versus

Ocean Seven Buildtech Private Limited.
Regd. Office at: 505-506, 5th Floor, Tower B-4,
Spaze I-Tech Park, Sector-49, Gurugram.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Manoj Sharma (Advocate)
Arun Yadav (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Project name and location	"The Venetian", Sector- 70, Gurugram, Haryana.
2.	Project area	5.10 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and other details	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others
5.	Building plan approval dated	07.02.2020 (As per DTCP website)
6.	Environment clearance dated	Not yet obtained
7.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 Valid up to- 02.09.2024
8.	Allotment letter	09.03.2021 [Page 58 of complaint]
9.	Builder buyer agreement	Not executed
10.	Flat no.	002, Type I, tower 3 [Page 58 of complaint]
11.	Unit admeasuring	571.105 sq. ft. (carpet area) (Page 58 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 per CRA at page 17 of complaint]
15.	Amount paid by the complainant	Rs. 10,61,710/- [As per page 61, 64 & 67 of complaint]
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainants were allotted a flat bearing no. 002 having carpet area of approx. 571.105 sq ft. and covered balcony area of about 98 sq ft



- approx. in Tower No-3 in project of the respondent named "The Venetian", Sector-70, Gurugram vide allotment letter dated 09.03.2021.
- II. That the complainants had already paid more than 45% of the total flat sale value but had not received any progress report therefore, the complainant on 17.07.2022 sent an e-mail to the respondent to enquire about the status and development of the aforementioned project enclosing site images which had taken place in past 16 months i.e., from the date of allotment till 17.07.2022. It is pertinent to mention here that in response to the said e-mail, the respondent sent an unsatisfactory response via email dated 20.07.2022.
- III. That on 24.07.2022, the complainant sent another e-mail regarding the status report of the said project, stating that neither he nor his wife, who is the co-owner, had received any phone call or visit from anyone from the respondent to update them regarding the status of the abovementioned project. Further, the respondent had not shared any project image to ensure them that the work on the project has begun. Having received no response, the complainant sent another email on 21.08.2022 to the respondent which also fell on deaf ears.
- IV. That on 04.01.2023, the complainant had sent a separate e-mail to express his concern about the progress report on the project, which he had not received from the respondent despite sending multiple e-mails, as mentioned above. It is humbly submitted that the complainants upon their personal visit to the HRERA website observed that a number of show cause notices have been issued against the respondent on account of non-filing of quarterly project report in the HRERA.
- V. That the complainants were shocked to see a newspaper article published in "The Times of India" dated 25.02.2023, wherein it was stated that



Department of Town and Country Planning has suspended the license granted to Ocean Seven Buildtech Pvt. Ltd. i.e., the respondent as it has failed to comply with the terms and conditions of the license granted to it.

- VI. That it is pertinent to note that even after 2 years from the date of allotment of the unit to the complainants, the construction activity has not started which clearly shows there has been no execution of the obligations of the respondent and neither the respondent has any intention to deliver the project nor any interest to complete the same. It is therefore, most respectfully prayed that the instant complaint may kindly be allowed with costs and reliefs sought herein in favour of the complainants.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
5. 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

6. The respondent/promoter put in appearance through Advocate and marked attendance on 20.03.2024 and 29.05.2024. Despite specific directions for filing of reply, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 24.07.2024, the defence of the respondent was struck off. However, in the interest of justice, the respondent was given a liberty to file written submissions within a period of two weeks, but the same has not been submitted by it till date.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:



34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainants.

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

12. The complainants were allotted a unit bearing no. 002, in Tower-3 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 complainants 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 complainants have paid an amount of Rs.10,61,710/- 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 complainants have filed the present complaint seeking refund of the amount paid alongwith interest at prescribed rate.

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13. 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 after 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."

14. 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.

15. 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.



16. Thus, the complainant-allottees are 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.
17. 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*.

G. Directions of the authority

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent is directed to refund the entire paid-up amount 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.
 - 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.
 - The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount



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along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

19. The complaints stand disposed of.
20. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2024



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