BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**556 of 2024**
Date of complaint	**:**	**16.02.2024**
Date of order	**:**	**23.04.2025**

Darshana Hooda,
R/o: - 2107/36, Dhanwapur Road,
Surat Nagar, Phase-2, Gurugram. **Complainant**

Versus

M/s Ocen Seven Buildtech Pvt. Ltd.
Regd. Office At: - 505-506, Tower B-4,
Spaze I-Tech Park, Sector-49, Gurugram. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Gaurav Rawat (Advocate) Complainant
Arun Yadav (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. 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:

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	21.09.2017 (page 28 of complaint)
6.	Unit no.	2502, Tower 3, 25th Floor (Page 42 of complaint)
7.	Unit area admeasuring	645 sq. ft. (carpet area), 99 sq.ft balcony area (Page 42 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	17.06.2017 (page 40 of complaint)
9.	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.
10.	Date of environmental clearance	30.11.2017 (as per information obtained from the planning branch)
11.	Date of approval of building plans	26.09.2016 (As per project details)
12.	Due date of possession	30.05.2022 (Calculated as 4 years from the 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)
13.	Total sale consideration	Rs. 26,29,500/- (As per BBA on page 45 of complaint)
15.	Amount paid by the complainant	Rs. 19,10,340/- (As per page ledger account at page 30 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That the complainant was allotted a residential unit bearing no. 2502, tower-3, 25th Floor, having carpet area measuring 645 sq. ft. and balcony area 99 sq. ft. in the project of the respondent named "Expressway towers" at Sector 109, Gurugram, Haryana vide allotment letter dated 20.05.2017. Thereafter, a buyer's agreement was executed between the parties on 17.06.2017. It is pertinent to mention here that the agreement has been executed after coming into the force of the RERA Act,2016 and the project is registered with the Authority, but the agreement that has been executed is not as per the prescribed format provided under the RERA Act,2016 and HARERA Rules,2017.

II. That as per 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.

III. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.19,10,340/- towards the said unit against the total sale consideration of Rs.26,29,500/-.

IV. That the payment plan was designed in such a way to extract maximum payment from the buyers *viz a viz* or done/completed. The complainant contacted the respondent on several occasions and the respondents was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.

V. That the respondent has played a fraud upon the complainant and has cheated her fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.

VI. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/payment to till the realization of money under Section 18 & 19(4) of Act. The complainant is also entitled for any other relief which she is found entitled by this Authority.

VII. That the complainant after losing all the hope from the respondent company, having her dreams shattered of owning an unit & having basic necessary facilities in the vicinity of project and also losing considerable amount, is constrained to approach this Authority for redressal of her grievance.

C. Relief sought by the complainant:

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

i. Direct the respondent to pay delay possession charges, to handover possession and to execute conveyance deed in favour of the complainant.

ii. Direct the respondent to not to force the complainants to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.

iii. Direct the respondent to provide the exact layout plan of the unit.

iv. Direct the respondent to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.

v. Direct the respondent to not to charge anything irrelevant which has not been agreed between the parties.

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 vide its reply dated 20.112024 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 has failed to pay the required installment on time despite several attempts through telephonic calls, emails and various letters.

iii. That the final EC is CTE/CTO which has been received by the respondent in February 2018 and the covid and NGT stay relaxation and other unforeseen conditions that comes under force majeure clause in the agreement. Hence the start date of project is Feb 2018 and rest details are as follows:

Covid and NGT Restrictictions		
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	Feb 2023 till date	
further time to be extended till the unfreezing of the accounts i.e. Feb- Nov 2023 (10 months)	Nov-23	
Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	Nov-25	

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.

iv. That owing to the complainant's consistent failure to meet their financial commitment, the unit of the complainant is cancelled as per the norms and conditions laid down in affordable group housing policy 2013 and agreement to sale.

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 parties.

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 objections raised by the respondent:

F.I Objections regarding force majeure.

12. 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. 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 frozen 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.

13. 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.

14. 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 respondent to pay delay possession charges, to handover possession and to execute conveyance deed in favour of the complainant.

15. 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."*

16. 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."*

17. **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.

18. **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.*

19. 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.

20. 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., 23.04.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

21. 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;"

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

23. 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. The respondent vide its reply dated 20.11.2024 has contended that the complainant has not paid the outstanding installments with interest. For that reason, the respondent has cancelled her unit and allotted to some other buyer. However, as per record, the complainant is not at default and has paid a considerable amount of money towards the sale consideration of the unit. Further, there is no document available on record to substantiate the claim of the respondent. Accordingly, the claim of the respondent is rejected being devoid of merits. Moreover, 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.

24. 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, 2017.

25. 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 allottee. 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.

G.II Direct the respondent to to not to force the complainant to sign any indemnity cum undertaking as a precondition for signing the conveyance deed.

26. The Authority observes the said issue has already been decided by this Authority in complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V. Emaar MGF Land Ltd.*** wherein it is held that the respondent shall not place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights. Ordered accordingly.

G.III Direct the respondent to provide the exact layout plan of the unit.

27. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or Rules and Regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent-promoter is directed to provide the exact layout plan of the unit in question to the complainant-allottee within a period of 1 month from the date of this order.

G. IV Direct the respondents to not to charge monthly maintenance charges for a period of 12 months or more before giving actual possession of the unit.

28. The issue of maintenance charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can only charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024.

H. 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

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 against the paid-up amount at the prescribed rate of 11.10% 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, 2017.

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 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 before 10th of the subsequent month as per rule 16(2) of the Rules.

iii. The respondent/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainant.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.

v. The respondent/promoter shall 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.

vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

vii. The respondent/promoter is further directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to her rights as has been decided by the authority in complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V. Emaar MGF Land Ltd.***

viii. The respondent/promoter is directed to provide the exact layout plan of the unit in question to the complainant-allottee within a period of 1 month from the date of this order.

ix. The respondent/promoter can charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in category-II of the office order dated 31.01.2024.

x. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under the Affordable Housing Policy, 2013.

30. The complaints stand disposed of.

31. Files be consigned to registry.

(Ashok Sangwan)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.04.2025