

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

**Complaint no.:** 701 of 2023  
**First date of hearing:** 30.05.2023  
**Date of order:** 06.03.2025

Amulya Vasudeva

**R/o:** - H. No. 91, Ward No.27, Sector-13, Part-2,  
Hisar, Haryana-125001

**Complainant****Versus**

M/s Ocean Seven Buildtech Private Limited

**Regd. Office At:** - 505-506, Spaze I Tech Park  
Sohna Road, Sector-49, Gurugram- 122018.

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Harshit Batra (Advocate)

Shri Arun Yadav (Advocate)

Complainant  
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 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.	Name and location of the project	"The Venetian" at sector-70, Gurugram
2.	Nature of the project	Affordable group housing
3.	Project area	5.10 acres
4.	DTCP license no.	103 of 2019 dated 05.09.2019 Valid up to 04.09.2024
5.	RERA Registered/ not registered	<b>Registered</b> Vide no. 39 of 2020 dated 27.10.2020 Valid up to 02.09.2024
6.	Unit no.	304 in Tower-4 (As per page no.19 of the complaint)
7.	Unit area admeasuring	556.280 sq. ft. (Carpet area) & 90 sq. ft. (balcony area) (As per page no.19 of the complaint)
8.	Date of allotment	09.03.2021 (As per page no. 19 of the complaint)
9.	Date of approval of building plan	07.02.2020 (as per DTCP official website)
10.	Date of environmental clearance	Not obtained (as submitted by CRM Official of the respondent during the proceedings dated 06.03.2025)
11.	Date of execution of buyer's agreement	Not executed
12.	Payment plan	Time linked payment plan
13.	Possession clause	<b>Not provided</b>
14.	Possession Clause (as per affordable housing policy, 2013)	<b>1(IV) of the Affordable Housing Policy, 2013</b>



		<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>
15.	Due date of possession	Cannot be ascertained
16.	Total sale consideration	Rs.26,29,500/- (As per page no. 23 of the complaint)
17.	Amount paid by the complainant	Rs.5,73,207/- (As per receipt information on page no. 18 & 21 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Letter for surrender of unit	19.11.2021 (As per page no. 22 of the complaint)

#### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
  - a. That the complainant booked a unit in the Affordable Housing Project of the respondent by the name of "The Venetian" at Sector 70, Gurugram, Haryana vide application no.5931 on 21.12.2020 and paid an amount of Rs.1,13,506/- only vide cheque dated 04.01.2021. Thereafter, the respondent issued an allotment letter dated 09.03.2021 to the complainant and allotted a unit bearing flat no.304 in Tower 4 2BHK (Type-2) of the said project having a carpet area 556.280 sq. ft. and balcony area of 90 sq. ft.
  - b. That after the allotment the respondent, failed to execute the buyer's agreement, despite the complainant's continuous communications to get the same executed.

- c. That after the booking the respondent raised another demand from the complainant of Rs.4,59,701/-. The complainant, believing the false representations made by the respondent with respect to the timely delivery of the said project and the execution of the buyer's agreement, paid the said amount to the respondent vide cheque dated 31.03.2021. However, all of the promises made by the respondent were proved to be false as the respondent failed to execute the BBA even after the payment of Rs.5,73,207/-.
- d. The complainant visited the offices of the respondent numerous times to get the same executed, however, to the dismay of the complainant, the respondent paid no heed to the requests of the complainant and failed to execute the builder buyer agreement despite the payment of Rs.5,73,207/- which is more than 10% of the total sale consideration of the unit. The respondent is in clear violation of the Section 13(1) of the Act, 2016.
- e. That the complainant dream of owning a peaceful possession, as promised by respondent has been shattered by the respondent in a most unlawful and illegal manner. That it is anticipated that the respondent had malafide intention from the very beginning with the intention to cheat and harm the innocent homebuyers.
- f. That furthermore, the respondent has failed in complying with all the obligations, not only with respect to the allotment with the complainant but also with respect to the concerned laws, rules, and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent has been making false statements that they will execute the builder buyer agreement but has miserably failed to do so.
- g. That even after almost 3 years of the booking of the unit, it has not been completed and not even any BBA has been executed by the respondent which clearly shows the malafide intention of the respondent.



- h. That with the dream of owning a house that was advertised to be a progressive and aesthetic property, the complainant made payments to the respondent as and when required however, looking at the status of the construction of the project, the complainant could not help but feel helpless as there was not even an iota of construction to be seen at the project site
- i. That the complainant, feeling helpless, sent a written request to the respondent to refund the amount paid by the complainant for the said unit in the project of the respondent. The respondent, duly acknowledged and received the said letter and told the complainant to return all the original documents including the original allotment letter as well as the receipts so issued by the respondent so that the respondent can initiate the refund of the complainant. The complainant believing the assurances of the respondent, returned all the original documents to the respondent so that the respondent can issue the refund.
- j. However, to the utter dismay of the complainant, the respondent, after receiving all the original documents, turned a blind eye to the request of the complainant and never issued the refund to the complainant, despite the complainant duly sending all the original documents back to the respondent.
- k. That the conduct of the respondent has been malafide from the very inception of the project and has been trying to cheat the complainant out of their hard-earned money. That as per the Affordable Housing Policy, 2013, each and every project has to be given possession within 4 years of such sanctions however, seeing the conduct of the respondent and the construction status of the project there is no hope that the respondent will be able to finish the project within the stipulated time period and the complainant cannot be forced to wait indefinitely for the construction of the project when the conduct of the respondent is seen to be extremely malafide from the very beginning.

- l. That diminutive construction has been done at the project site despite the lapse of more than 2 years from the date of booking which goes to show that the respondent had a malafide intention from the beginning. The complainant cannot be expected to wait indefinitely for the possession of the unit when they have already paid a substantial amount and no construction has been done on a land which is already disputed. Moreover, if we keep in view the current progress of the construction it is impossible for the respondent to start the construction and the chances of respondent handing over the possession at the due time are negligible. The complainant has lost all faith and trust in the respondent.
- m. That the present case is a clear exploitation of innocence and beliefs of the complainant and shows the intent of the respondent to retain the complainant hard-earned money illegally, without complying with the laws as well as executing the builder buyer agreement.
- n. That the act and conduct of respondent is contrary to the settled terms and conditions and the settled law. That there has been grave default in fulfilment of commitments by respondent, in a timely fashion and the same has been acting contrary to the lawful.
- o. That the complainant strongly opines that the method chosen by the respondent in duping the complainant amounts to unfair trade practices for which the respondent is liable to be punished in accordance with the law.
- p. In the present case, the mental agony and torture caused to the complainant is unquantifiable due to the deliberate illegal acts of the respondent carried with the sole intention to harass the complainant and to gain illegal monetary benefits over the wrongful loss of the complainant.
- q. That the complainant should be compensated for the principal amount of Rs.5,73,207/- paid to the respondent along with the prescribed rate of interest



as per Act, 2016 and Rules, 2017 from the date of receipt of each payment till the date of refund. Additional compensation should also be granted for all the mental agony and harassment as well as financial loss that the complainant suffered to see their hard-earned money go nowhere and because of the fraudulent acts of the complainant.

- r. That the respondent has utterly failed to fulfil his obligation timely completion and delivery of the possession of the said unit which has caused mental agony, harassment and huge losses to the complainants, hence the present complaint.

**C. Relief sought by the complainant: -**

4. The complainant has sought following relief(s):
- To direct the respondent to refund the complainant amount of Rs.5,73,207/- along with the prescribed rate of interest @ MCLR+2% from the respective dates of payment till the date of realization;
  - To direct the respondent to pay Rs.1,00,000/- towards litigation costs.
  - Pass any other order in the interest of equity and justice.
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 is contesting the complaint on the following grounds:
- That this hon'ble authority lacks jurisdiction to adjudicate upon the present complaint. Both parties have executed an arbitration clause, clearly outlined in the agreement, empowering either party to seek resolution through arbitration. As per the said arbitration clause, any disputes arising out of the agreement shall be submitted to an arbitrator for resolution. Therefore, the present matter be referred to arbitration in accordance with the terms set forth in the agreement.

- b. That as expressly stipulated in the agreement to sale, the parties, herein, the complainant and respondent, have unequivocally agreed to resolve any disputes through arbitration. This agreement to sell is fortified by clause 16.2 wherein it is stated that all or any disputes arising out of or touching upon or relating to the terms of this agreement to sell/conveyance deed including the interpretation and validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled despite best efforts, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the company in Gurgaon by a sole arbitrator who shall be appointed by the company. The cost of the arbitration proceedings shall be borne by the parties equally. The language of arbitration shall be in English. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon, Haryana as well as of Punjab and Haryana High court at Chandigarh. That the respondent has not filed his first statement before this court in the subject matter.
- c. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments. The complainant is a defaulter under section 19(6) & 19(7) of the Act. It is humbly submitted that the complainant failed to clear his outstanding dues despite several reminders that were issued by the respondent.
- d. That the complainant's motives are marred by malafide intentions. The present complaint, founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. The complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent



and unjustified complaint. This action is not only illegal and unlawful but also goes against the principles of natural justice.

e. That there is every apprehension that the complainant in collusion with any staff member of the respondent company including ex-employee or those who held positions during that time may put forth the altered and fabricated document which is contradictory to the affordable housing policy & should not be considered binding on the company in any manner whatsoever.

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 complainant.

#### **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**

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**(4) The promoter shall-**

*A*

(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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. 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."*



13. 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.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to refund the complainant amount of Rs.5,73,207/- along with the prescribed rate of interest @ MCLR+2% from the respective dates of payment till the date of realization.**

**F.II Pass any other order in the interest of equity and justice.**

14. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. The complainant was allotted a unit bearing no.304 in Tower-4, 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 allotment letter dated 09.03.2021. 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.5,73,207/- 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.

16. 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".*

17. In the present matter, the subject unit was surrendered by the complainant vide letter dated 19.11.2021 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.
18. 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."*

19. Also, the respondent has raised an objection that complainant allottee is a wilful defaulter and has failed to make payment of the instalments and has thus violated provisions of section 19(6) & (7) of the Act. 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.
20. 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.*

21. 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.
22. 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.
23. Hence, the respondent/promoter is directed to refund the entire paid-up amount of Rs.5,73,207/- 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., @11.10% 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*.

**F.III Direct the respondent to pay Rs.1,00,000/- towards litigation costs.**

24. The complainant is seeking above mentioned relief w.r.t litigation expenses. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s 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 legal expenses.






**G. Directions of the authority**

25. 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 of Rs.5,73,207/- 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.

26. The complaint stands disposed of.

27. File be consigned to registry.

V.I.   
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.03.2025