

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

Date of order: 24.04.2025

NAME OF THE BUILDER		M/s Ocean Seven Buildtech Pvt. Ltd.
PROJECT NAME		"THE VENETIAN", Sector- 70, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/2099/2023	Alok Kumar Vs M/s Ocean Seven Buildtech Private Limited
2.	CR/2218/2023	Vikas Rai Aggarwal Vs M/s Ocean Seven Buildtech Private Limited

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rajan Kumar Hans, Advocate

Shri Arun Yadav, Advocate

Complainant
Respondent**ORDER**

1. This order shall dispose of all the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Venetian", Sector- 70, Gurugram, Haryana being developed by the respondent-promoter i.e., M/s Ocean Seven Buildtech Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking refund of the unit along with interest.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"The Venetian", Sector- 70, Gurugram, Haryana.
Project area	5.10 acres
Nature of the project	Affordable group housing colony
DTCP license no. and other details	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others
Building plan approval dated	07.02.2020 (As per DTCP website)
Environment clearance dated	Not yet obtained
RERA Registered/ not registered	Registered Vide no. 39 of 2020 dated 27.10.2020 Valid up to 02.09.2024
Occupation certificate	Not yet obtained
Possession clause as per Affordable Housing Policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <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>

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S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant	Relief sought
1.	CR/2099/2023 Alok Kumar Vs. M/s Ocean Seven Buildtech Private Limited DOF: 24.05.2023 RR: 11.01.2024	402, Tower-3 571.105 sq. ft. (carpet area) & 98 sq. ft. (balcony area) [Page 21 of complaint]	AL: 09.03.2021 [Page 21 of complaint] BBA: Not executed	Cannot be ascertained	TSC: Rs.23,33,420/- [Page 11 of complaint] AP: 8,83,785/- [As per demand letter on page no.25 and copy of cheques provided at page 23-24 of complaint]	Refund along with interest and compensation
2.	CR/2218/2023 Vikas Rai Aggarwal Vs. M/s Ocean Seven Buildtech Private Limited DOF: 24.05.2023 RR: 11.01.2024	706, Tower-3 571.105 sq. ft. (carpet area) & 98 sq. ft. (balcony area) [Page 21 of complaint]	AL: 09.03.2021 [Page 21 of complaint] BBA: Not executed	Cannot be ascertained	TC: Rs.23,33,420/- [Page 11 of complaint] AP: 8,83,785/- [As per receipts information at page 20, 23 & 24 of complaint]	Refund along with interest and compensation

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received from the respondent
AL	Allotment Letter
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s

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/2099/2023 titled as **Alok Kumar 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/2099/2023 titled as **Alok Kumar Vs. M/s Ocean Seven Buildtech Pvt. Ltd.**

S.No.	Particulars	Details
1.	Name and location of the project	"The Venetian" at sector-70, Gurgaon, Haryana
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	Registered Vide no. 39 of 2020 dated 27.10.2020 Valid up to 02.09.2024
6.	Unit no.	402 & Tower-3 (As per page no. 21 of the complaint)
7.	Unit area admeasuring	571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (As per page no. 21 of the complaint)
8.	Date of allotment	09.03.2021 (As per page no. 21 of the complaint)
9.	Date of apartment buyer's agreement	Not executed
10.	Date of approval of building plan	07.02.2020 (As per DTCP official website)
11.	Date of environmental clearance	Not obtained till date
12.	Payment plan	Time linked payment plan
13.	Possession clause	Not available



14.	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>
15.	Due date of possession	Cannot be ascertained
16.	Total sale consideration	Rs.23,33,420/- (As per page no. 11 of the complaint)
17.	Amount paid by the complainant	Rs.8,83,785/- (As per demand letter on page no. 25 and copy of cheques provided at page 23-24 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Letter of suspension of license by DTCP	23.02.2023 (As per page no. 26 of the complaint)

B. Facts of the complaint

6. The complainant has made the following submissions in the complaint: -
 - a. That the project in question is known as "The Venetian", located in Sector-70, Tehsil and district Gurgaon, Haryana that is a project developed under the Affordable Housing Policy 2013, promoted by a reputed.
 - b. That the complainant along with their family members visited the site. The location was excellent and they consulted the local representative of the developer. The local representative of the developer allures the complainant with specification of the project.

- c. That on 30.11.2020, the Complainant paid an amount of Rs.1,16,671/- as the booking amount, along with the application to the respondent. Which was acknowledged by the respondent vide an acknowledgment slip-1754.
- d. That on the same date of 09.03.2021 the allotment letter was also issued by the respondent further complainants were allotted Flat no. 402 in Tower No. 3, 2BHK(Type-1) admeasuring 571.105 sq. ft. carpet area approx. and balcony area of 98 sq. ft.
- e. That the respondent has not executed the builder buyer agreement which is in contravention to Section 13 of RERA Act.
- f. That the total cost of the unit is as per policy 2013 was arrived at Rs.23,33,420/-. That on the demands of the respondent, till date the complaints have already paid an amount of Rs.8,83,785/- (which is 38% of the cost) till date to the respondent.
- g. That the project is a non-starter and the respondent have not demanded any further part payment of the total consideration from the complaint. That the DTCP Haryana vide its order dated: 23.02.2023 has suspended the License of the project.
- h. That the respondent has also acted in contravention to section 11(4) of the said act. That as per the section 18 of the RERA Act, 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottees of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- i. That the first cause of action for the present complaint arose on 30.11.2020, when the booking amount was paid by the complainant. Further the cause of action again arose on 09.03.2021 when allotment letter was executed and further cause of action arose when the respondent failed to provide



possession of the unit. Further when the payments were paid and protests were lodged with the respondent about its failure to provide possession of the unit. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and / or passes the necessary orders.

- j. The complainant finds the company unprofessional and illgitly "fraud" and does not want to further deal with the company anymore and wishes to cancel the unit and further wants a full refund of the payment with interest.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):
- I. Direct the respondent to cancel the unit and refund the entire amount i.e., Rs.8,83,785/- without any deduction.
 - II. Direct the respondent to pay interest at the scheduled rate of interest from the date of the Actual payment till the date of the actual refund.
 - III. Any other relief/ direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.
8. 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

9. The respondent is contesting the complaint on the following grounds:
- a. 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.
10. 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

11. 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

12. 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

13. 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.

14. 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.
15. 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."

16. 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 cancel the unit and refund the entire amount i.e., Rs.8,83,785/- without any deduction.

F.II Direct the respondent to pay interest at the scheduled rate of interest from the date of the actual payment till the date of the actual refund.

F.III Any other relief/ direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint.

17. 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.

18. The complainant was allotted a unit bearing no. 402, 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. 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 his unit through its complaint.

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 complainant-allottee has surrendered his allotted unit due to failure on the part of the respondent in obtaining environment clearance and has requested 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 along with an interest of 12%, if the allottee so desires."

22. 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.
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 of Rs.8,83,785/- 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

27. 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-promoter is directed to refund the entire paid-up amount of Rs.8,83,785/- 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.
28. 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.
29. The complaints stand disposed of.
30. Files be consigned to registry.

Dated:24.04.2025




(Vijay Kumar Goyal)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM