

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

Complaint no.: 1930 of 2024
Date of complaint: 16.05.2024
Date of order: 24.07.2025

Ajay Kumar Singh

R/o: - Village Dhamat, Post - Purkazi, District
Muzaffarnagar, Uttar Pradesh - 251327.

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 Mohit Kumar (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, 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.	907, 9 th Floor in Tower-2 (As per page no.27 of the complaint)
7.	Unit area admeasuring	571.105 sq. ft. (carpet area) 98 sq. ft. (balcony area) (As per page no.27 of the complaint)
8.	Date of allotment	09.03.2021 (As per page no.19 of the complaint)
9.	Date of apartment buyer's agreement	13.04.2021 (As per page no.22-42 of the complaint)
10.	Date of approval of building plan	07.02.2020 (As per DTCP official website)
11.	Date of environmental clearance	Not yet obtained
12.	Payment plan	Time linked payment plan
13.	Possession clause	Not available
14.	Possession Clause	1(IV) of the Affordable Housing Policy, 2013

	(as per 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.27 of the complaint)
17.	Amount paid by the complainant	Rs.11,78,381/- (As per payment receipts at page 18, 21, 45 & 48 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Letter for cancellation of allotment and request for refund	22.05.2023 (As per page 49 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That on 11.11.2020 the complainant applied for allotment of one apartment unit in the above said project namely "The Venetian" having a space of 571.105 sq. ft. (approx) carpet area with 98 sq. ft. balcony at the basic sale price @Rs.4000/- per sq. ft. and balcony area at basic price of Rs.500/- per sq. ft. and paid an amount of Rs.1,16,971/- vide a cheque bearing no.000076 drawn on HDFC Bank, Gurgaon dated 10.11.2020 as booking.
 - b. That the respondent again sent an allotment letter /demand letter dated 09.03.2021 against the booking for unit as above, the complainant issued

cheques no.000077 dated 20.03.2021 for a sum of Rs.4,72,518/-. Pursuant to that payment, the respondent issued a receipt dated 31.03.2021.

- c. That thereafter, builder buyer agreement was executed on 13.04.2021 in respect of the above said unit/flat which was duly registered in the office of Sub-Registrar Badshahpur, Distt. Gurugram on 01.12.2021 vide deed no9212. However, the respondent did not intimate any timeline within which the buyer's agreement would be executed. Finally, after several months from the date of booking, the respondent had executed the builder buyer agreement.
- d. That the respondent again sent a demand letter to pay instalment of Rs.2,94,596/- However, on the assurance of the respondent, the complainant continued to fulfil his obligation and accordingly paid further amount of Rs.2,94,596/- vide NEFT No. N251211630697573 dated 08.09.2021. The respondent acknowledged the same and issued the receipt of the said amount vide their receipt dated 11.09.2021.
- e. That the respondent again sent a demand letter to pay instalment of Rs.2,94,596/-. However, on the assurance of the respondent, the complainant continued to fulfil his obligation and accordingly paid further amount of Rs.2,94,596 vide NEFT No. N106221920390608 dated 16.04.2022. The respondent acknowledged the same and issued the receipt of the said amount vide their receipt dated 24.05.2022.
- f. That the complainant visited the site of project and shocked to see that there is no such construction is carried on by the respondents whereas the respondent has regularly taken instalments of the booked unit from the complainant as well as other allottees.
- g. That thereafter, the complainant approached to the officials of the respondent and asked about the status of the building/project but the officials of the respondent failed to give any satisfactory answer. Due to which, the complainant

applied for cancellation of his booking of unit and requested for refund of his entire paid amount vide letter dated 22.05.2023.

- h. That the request for cancellation of the unit of complainant was duly accepted by the respondent and had assured to refund the paid amount within a short span of time. But till date the respondent again and again lingers on the matter on one pretext to other and did not pay any heed to the just and legal genuine request of the complainant for refund of his paid money.
 - i. That the acts of the respondent are palpably unfair trade practice as innocent customers are lured into buying projects from them only to suffer financial loss later, not to speak of immense mental stress and harassment.
 - j. That this Authority has the jurisdiction to try the present complaint as it is by now settled that under section 31 of the RERA Act, any aggrieved person may file a complaint pertaining to any housing project, either registered or unregistered.
 - k. That the cause of action has arisen, when the complainant visited the project site and shocked to see that there is no such construction carried on, the cause of action further arose on 22.05.2023, when the complainant requested for cancellation of unit, the cause of action is still subsisting. That this complaint has been made bonafide and in the interest of justice.
- C. Relief sought by the complainant: -**
- 4. The complainant has sought following relief(s):
 - i. Pass appropriate directions to the respondent to refund the entire paid-up amount of Rs.11,78,444/-.
 - ii. Pass appropriate directions to the respondent to pay interest on the amount of Rs.11,78,444/- from the date of deposit till the date of actual receipt at the prescribed rate.
 - iii. Pass an award of Rs.10,00,000/- as damages/ compensation to the complainant for delay in giving the refund of the flat after passing for more than 11 months of cancellation of allotment application and for causing mental agony, pain and suffering to the complainant.

- iv. Award a cost of Rs.1,00,000/- towards litigation expenses in favour of the complainant and against the opposite party.
 - v. Pass any other order as this Hon'ble Authority may deem fit and proper in the interest of 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:
- a. That this 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

.....

(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 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 entire paid-up amount of Rs.11,78,444/-.

F.II Direct the respondent to pay interest on the amount of Rs.11,78,444/- from the date of deposit till the date of actual receipt at the prescribed rate.

F.III Pass any other order as this Hon'ble Authority may deem fit and proper in the interest of 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.907 at 9th Floor in Tower-2, 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, a builder buyer agreement was executed between the complainant and respondent in respect of the subject unit on 13.04.2021. 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.11,78,444/- to respondent. Due to failure on the part of the respondent in obtaining environment clearance from the concerned authority and inordinate delay on part of the respondent to start construction of the project in question, the complainant has surrendered the unit/flat vide a letter dated 22.05.2023.

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 22.05.2023 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 willful 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.

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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.11,78,444/- 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*.

F.IV Pass an award of Rs.10,00,000/- as damages/ compensation to the complainant for delay in giving the refund of the flat after passing for more than 11 months of cancellation of allotment application and for causing mental agony, pain and suffering to the complainant.

F.V Award a cost of Rs.1,00,000/- towards litigation expenses in favour of the complainant and against the opposite party.

24. The complainant is seeking above mentioned relief w.r.t compensation cost and 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 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.11,78,444/- as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as

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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: 24.07.2025

HARERA
GURUGRAM