

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

Complaint no. 7185 of 2022

Complaint filed on: 15.11.2022

Date of decision: 23.05.2025

Anup Agrawal

R/o: Mangalam Agencies, Sikrai, Dausa,
Manpur Road, Rajasthan-303508

Complainant

Versus

M/s Ocean Seven Buildtech Pvt. Ltd.

Address: B4-505, 506 Spaze Tech Park,
Sohna Road, Sector 49, Gurugram, Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPERANCE:

Shri Satpal Yadav

Shri Arun Yadav

**Complainant
Respondent**

ORDER

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

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A. Project and unit related details

2. 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:

S. N.	Particulars	Details
1.	Name of the project	The Venetian, Sector- 70, Gurugram, Haryana
2.	Project area	5.10 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and validity status	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 02.09.02024
6.	Allotment letter	09.03.2021 [Page 18 of complaint]
7.	Builder buyer agreement	Not executed
8.	Flat no.	501, Type 2, tower 5 [Page 18 of complaint]
9.	Unit admeasuring	556.280 sq. ft. (carpet area) 90 sq. ft. (balcony area) [Page 18 of complaint]
10.	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</i>



		<i>not be renewed beyond the said 4 years period from the date of commencement of project</i>
11.	Building plan approval dated	07.02.2020 (As per DTCP website)
12.	Environment clearance dated	Not yet obtained
13.	Due date of possession	Cannot ascertained
14.	Total sale price of the flat	Rs. 23,33,420/- [As alleged by the complainant at page 10 of complaint]
15.	Amount paid by the complainant	Rs. 5,73,207/- [As per demand letter, page 19 of complaint]
16.	Surrender/refund request letter by complainant	06.01.2022 [Page 21 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the complainant filed an application for the above said project and deposited 5% of total amount by cheque. Thereafter, the draw was organized by the respondent and allotted a flat no. 501 Tower 5, 2 BHK (Type – 2) on dated 09.03.2021. After allotment of flat, the complainant deposited 20% of the total amount according to the Policy. But after six months, the respondent demanded next installment i.e., 12.50% but complainant denied to deposit the same as the respondent has not started any construction activity at the project site. Complainant waited for some time but they did not start work. Upon enquiry, the respondent replied that environment clearance has not been approved by the government and assured



that the same will be granted soon. After waiting sufficiently, the complainant gave an application for cancellation of the allotment and refund of the deposited amount. Despite aforesaid request, the respondent has failed to refund the deposited amount, hence, the present complaint.

C. Relief sought by the complainant: -

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

- i. Direct the respondent to refund the entire amount paid by the complainant along with the prescribed rate of interest payable from the date of payment made by the complainant to the respondent till the date of realization as per the provision of the Act, rules and regulations framed thereunder.
 - ii. Direct the respondent to compensate the complainant by paying an interest @ 24% p.a. on the amount already paid i.e., Rs. 5,73,207/- from the time it was paid till date.
 - iii. Grant any other relief in favour of the complainant as the Hon'ble Authority may deem fit and proper in the fact and circumstances of the case.
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:

- I. 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

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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.

- II. 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."
- III. That the complainant is a willful defaulter and deliberately, intentionally and knowingly has 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 the outstanding dues despite several reminders that were issued by the respondent.

- IV. 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.
- V. That the respondent company shall not be responsible or liable for not performing any of its obligations or undertaking provided for in the buyer's agreement if such performance is prevented due to force majeure conditions. In case the respondent is forced to abandon the said project for any reason, the respondent shall be liable to refund the amount paid by the allottee. In such a case, the respondent's liability shall be limited to refund of the amount paid by the allottee. However, in such an eventuality the amount of interest paid/payable by the allottee on any delayed payment shall not be refunded. It is further agreed by the allottee that it shall not make any other claim on the company.
- VI. 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) 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 objections raised by the respondent

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

14. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement.
15. The authority observes that it is matter of fact and record that no BBA has been executed inter se parties in both the complaints, thus, the respondent's plea regarding invoking arbitration clause is not sustainable. Moreover, 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

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clause. Therefore, by applying same analogy, the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

F.II Apprehension by the respondent regarding fabrication of the documents by the complainant-allottee.

16. The respondent has raised an objection that it has apprehension that the present complaint is founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. It is further stated that the complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint.
17. The authority observes that the objection raised by the respondent are vague and false as the respondent has not specified as to what document is fabricated which is in violation of the Affordable Housing Policy, 2013. Further, the respondent has failed to substantiate the said allegations during the course of arguments and has failed to corroborate the same by placing on record requisite documents. The authority is of the view that only apprehension cannot be a ground for dismissal of complaint and cannot defeat the ends of justice. Thus, the objection raised by the respondent stands rejected.

G. Findings on the relief sought by the complainant.

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

18. The complainant was allotted a unit bearing no. 501, in Tower-5 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. Thereafter, builder buyer agreement was not executed between the complainant and respondent in respect of the subject unit. As per clause



1(iv) of the policy of 2013, all projects under the said policy shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Thus, the possession of the unit was to be offered within 4 years from the approval of building plans (07.02.2020) or from the date of environment clearance (not obtained yet). Therefore, the due date of possession cannot be ascertained. As per record, the complainant has paid an amount of Rs.5,73,207/- to the 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 letter dated 06.01.2022 and has requested the respondent to cancel the allotment and refund the entire amount paid by him along with interest.

19. The authority observes 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



licencee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."

20. The authority observes that as per allotment letter, the draw for allotment of the unit was conducted on 09.03.2021. Thus, the respondent was under obligation to obtain environmental clearance within 1 year from 09.03.2021. However, till date the respondent has failed to obtain EC from the competent authority. Thus, in view of the aforesaid provision, the respondent is liable to refund the amount received by it along with interest. 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, is not entitled to receive any further payments from the allottees. Hence, this objection raised by the respondent is also devoid of merits.
21. 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.

22. 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.
23. 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.
24. Hence, the respondent/promoter is directed to refund the entire paid-up amount 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*.

G.II Direct the respondent to compensate the complainant by paying an interest @ 24% p.a. on the amount already paid i.e., Rs. 5,73,207/- from the time it was paid till date.

25. The complainant is also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. 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 compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation under the provisions of the Act.

H. Directions of the authority

26. 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 amount paid by the complainant in terms of 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.

27. The complaint as well as application, if any, stand disposed of.

28. File be consigned to registry.

Dated: 23.05.2025


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram