

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

Complaint no. : 6521 of 2022
Date of filing : 20.10.2022
Order pronounced on: 30.05.2025

Cdr. Abhinav Jha

R/O: K-22/11, Street no. 5, Gangotri Vihar, West
Ghonda Delhi-110053,

Also at: N2-1704, M3M The Marina, Sector 68, Sohna
Road, Gurugram, Haryana- 122006.

Complainant

Versus

M/s Ocean Seven Buildtech Private Limited

Regd. Office At: - 2th Floor, Tilak Bhawan, Tilak
Marg, Jaipur.

Office at: B 505-506, Spaze I Tech Park, Sohna Road,
Sector 49, Gurugram, Haryana- 122001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Aditi Mishra (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 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 and location of the project	"Expressway Towers" Sector- 109, Gurugram, Haryana
2.	Project area	7.5 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no.	06 of 2016 dated 16.06.2016 Valid up to 15.06.2021
5.	RERA Registered/ not registered	Registered Vide no. 301 of 2017 dated 13.10.2017 Valid up to 12.10.2021
6.	Allotment	20.05.2017 [Page 26 of complaint]
7.	Buyer's agreement	17.07.2017 [Page 29 of complaint]
8.	Unit no.	1503, 15 th floor, tower 6 [Page 34 of complaint]
9.	Unit area admeasuring	645 sq. ft. carpet area with 99 sq. ft. balcony area [Page 34 of complaint]
10.	Possession clause	5.2 Possession Time <i>The Company shall sincerely endeavor to complete the construction and offer the possession of the said unit within five years from the date of the receiving of license ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s).</i>



		[Page 41 of complaint]
11.	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>
12.	Building plans approved on	26.09.2016 [As per information obtained from the planning branch]
13.	Environmental clearance	30.11.2017 [As per information obtained from the planning branch]
14.	Due date of possession	30.05.2022 [Calculated as 4 years from date of grant of environmental clearance i.e., 30.11.2017 as per policy of 2013 + 6 months as per HARERA notification no. 9/3 -2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
15.	Total sale consideration	Rs. 26,29,500/- [As per BBA at page 34 of complaint]
16.	Amount paid by the complainant	Rs. 9,85,945/- [As alleged by complainant on page 16 of complaint]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Demand letter	25.07.2019 (as submitted by counsel for respondent during the proceedings dated 01.05.2025)

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20.	News-paper publication	11.08.2019 (as submitted by counsel for respondent during the proceedings dated 01.05.2025)
21.	Cancellation letter and publications	18.05.2020 (as submitted by counsel for respondent during the proceedings dated 01.05.2025)
22.	Fresh Allotment to new allottee	07.04.2022 (as submitted by counsel for respondent during the proceedings dated 01.05.2025)
23.	Legal notice by complainant for possession	14.09.2022 [Page 84 of complaint]
24.	Reply by the respondent to legal notice by complainant	21.09.2022 [Page 88 of complaint]

B. Facts of the complaint

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

- I. That the complainant booked a unit in the affordable housing project of the respondent company namely "Expressway Towers" at Sector 109, Gurgaon, Haryana. The license no. 06 of 2016 was issued on 16.06.2016 by Director, Town and Country Planning Department, Haryana in respect of the said project. The building plan and environment clearance in respect of the abovementioned project was granted on 26.09.2016 and 30.11.2017 respectively. The project was registered with RERA Panchkula on 13.10.2017 vide Regd. No. 301 of 2017 which was valid up to 12.10.2021 and has not been renewed since then.
- II. That the complainant submitted an application form bearing no. 3028 dated 05.11.2016 for booking in the said project. The draw of lots for the abovementioned project was conducted on 19.05.2017 and as the complainant herein was one of the successful applicants in the draw, he was allotted unit no.1503 (2BHK Type-1), Tower 6 having a carpet area of 645 sq.

ft. and balcony area of 99 sq. ft. for a total consideration of Rs.26,29,500/- vide allotment letter dated 20.05.2017.

- III. That the builder buyer agreement was executed on 17.07.2017. The respondent at the time of execution of agreement assured and represented that it has all the necessary sanctions and approvals for the construction of the project and same is mentioned in clause B of the agreement. The respondent promised to deliver the possession of the unit within 5 years from the date of license but the respondent has failed in fulfilling its obligation in offering possession on time and possession has not been offered or handed over to the complainant till date.
- IV. That in order to finance purchase of above said unit the complainant took home loan services of Aditya Birla Housing Finance Limited and Loan of Rs. 23,66,000/- was sanctioned in his favor vide letter dated 13.07.2017. The Bank on behalf of complainant further made a payment of Rs. 5,25,782/- by draft dated 29.07.2017 and Rs. 3,28,688/- was also made by the Bank on behalf of the complainant.
- V. That all of the above-said payments amounting to Rs. 9,85,945/- has been paid by the complainant as on date which amounts to 37.50% of total sale consideration.
- VI. That the complainant tried to contact the respondent time and again to seek clarifications about the stage-wise construction and completion of the project but all went in vain as there was no response from the side of the respondent. Till date, offer of possession has not been given by the respondent and there is a delay of more than 1 year for the unit for which the complainant has paid a sum of Rs. 9,85,945/-.
- VII. That the respondent company has violated various provisions of the Act, 2016 and has failed to adhere to promises and assurances which were made

to the complainant regarding completion of the project and therefore the respondent is liable to pay an interest of MCLR+2% (Per Annum) till date of actual possession.

- VIII. That the complainant further sent a legal notice dated 14.09.2022 to the respondent for redressal of his grievances and for possession of the above said unit to which the respondent replied through letter dated 21.09.2022 that the allotment has been cancelled vide letter dated 25.07.2019 but the complainant did not receive any such letter on its residential address or through email. Though the said letter came to the knowledge of the complainant when on constant perusal of the complainant with the respondent about construction status, representative of the respondent sent a photograph of said letter on whatsapp on 14.07.2021 after which the complainant met the respondent's representatives and raised his objections and clarified to them that he is ready to make all the payments if the construction is completed on time and respondent fulfill its contractual obligations. Assuming that the respondent had sent any such letter in 2019, the said letter dated 25.07.2019 cannot be termed as cancellation letter as the said letter was a notice for non-payment of dues as mentioned in the subject line of the letter dated 25.07.2019, thus the alleged cancellation of allotment is not in accordance with terms and conditions of agreement executed between the parties and also not in accordance with Affordable Housing Policy, 2013. Thus, the cancellation of allotment as mentioned in the reply to the legal notice is unfair, unlawful, arbitrary, and unilateral in nature. Also, assuming that the respondent has cancelled the allotment vide letter dated 25.07.2019, no refund has been made till date and no communication has been made in that regard with the complainant till date and it is only in reply to legal notice that they have asked the complainant to receive the

refund cheque and complete the cancellation proceedings. Thus, as the complainant is being deprived of his rights by the respondent by unlawful means, the complainant is left with no other remedy except to file the present petition.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
 - I. To set aside the cancellation vide letter dated 25.07.2019.
 - II. Direct the respondent to pay delayed possession charges from the due date of possession i.e., 16.06.2021 till handing over of possession.
 - III. Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said unit.
5. The authority issued a notice dated 07.12.2022 of the complaint to the respondent by speed post and also on the given email address at corporate@osbgroup.co.in for putting in appearance and for filing reply within 30 days. The counsel for the respondent appeared on 06.10.2023 and he was directed to file reply within the stipulated period. However, after giving sufficient opportunities on 16.02.2023, 11.08.2023 and 06.10.2023, no reply has been filed by the respondent. Therefore, in view of above, vide order dated 22.12.2023, the defence of the respondent was struck off. Further, during proceedings dated 24.01.2024, the counsel for the respondent stated that as per the provisions of the Affordable Housing Policy, 2013 and on default by the complainant, the unit of complainant was stands cancelled way back in the year 2021 and re-allotted to fresh allottee and requests for filing the documents pertaining to the newspaper publication, cancellation and fresh allotment. Subsequently, on 01.05.2025, the counsel for the respondent submitted a copy of newspaper publication, cancellation

letter as well as allotment letter of new allottee and supplied a copy of the same to the counsel for the complainant on 01.05.2025 and 08.05.2025.

D. Written submissions by the complainant.

6. Written submissions have been filed by the complainant on 27.09.2024. The same has been taken on record wherein it is stated that the respondent has not filed the reply, has not denied the allegations mentioned in the complaint and has not specifically stated when they started the construction, what milestones they achieved before raising the demands, and when they will complete the construction in all aspects. The respondent did not complete the construction within a reasonable time much less within the stipulated due date of possession and thus failed in its contractual obligations under the allotment letter and agreement for sale. The respondent is blaming the complainant in reply to legal notice for covering the latches on their part and trying to take benefit of its wrong. Further on page 92 of the complaint, the respondent in reply to legal notice has made false averments that construction is completed. The license for the said project was revoked by DTCP in 2021 and the project has been stalled since 2018-2019 and the occupation certificate has not been received till date. Further, several notices were issued by this Hon'ble Authority for updating the relevant information and documents related to the completion of the project. The complainant has availed home loan for payment for the said unit and is also paying the EMIs for the same. As the respondent has not issued any demand letter after 2019 and the project is stalled, the Bank has refused to disburse the amount and the complainant in its wisdom agreed to the same. The complainant is willing to pay the balance consideration once the respondent issues a revised statement of account adjusting the DPC till handing over of possession.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

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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.

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.

F. Findings on the relief sought by the complainant.

F.I To set aside the cancellation vide letter dated 25.07.2019.

F.II Direct the respondent to pay delayed possession charges from the due date of possession i.e., 16.06.2021 till handing over of possession.

F.III Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said unit.

11. 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.
12. The complainant was allotted unit no.1503 on 15th floor, in tower - 6, in the project "Expressway Towers" by the respondent/builder for a total consideration of Rs.26,29,500/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 17.07.2017. The possession of the unit was to be offered with 4 years from approval of building plans (26.09.2016) or from the date of environment clearance (30.11.2017). Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.05.2022. The complainant paid a sum of Rs.9,85,945/- up to 24.03.2018 and the complainant is willing to retain the allotted unit in question.
13. The counsel for the respondent states that the unit has been cancelled on 18.05.2020 after issuance of demand letter dated 25.07.2019 and publication

of list of defaulters in regional newspaper on 11.08.2019. Upon this, the counsel for the complainant submitted that the respondent failed to carry out the construction of the project and failed to issued demands against the said unit. Subsequently, the complainant also sent a legal notice letters dated 14.09.2022 to the respondent to provide the possession of the allotted unit and payment of delay possession charges.

14. Now, the question before the authority is whether this cancellation letter dated 18.05.2020 is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

15. It is observed that the complainant failed to pay the remaining amount as per schedule of payment which becomes due on 19.05.2018, 19.11.2018 and 19.05.2019 after this a reminder of demand letter dated 25.07.2019 and published a notice in the newspaper on 11.08.2019 which led to issuance of notice for cancellation by the respondent/builder dated 18.05.2020.
16. It is to be noted that as per the schedule of collection of payment provided under section 5(iii)(b) of Affordable Group Housing Policy 2013, it is time linked payment plan instead of construction linked payment plan. Further as per Section 19(6) of the Act, 2016, every allottee, who entered into an agreement, shall be responsible to make necessary payment within the time

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period as specified in the said agreement. The relevant para is reproduced below:

"Section 19 Rights and Duties of Allottees

19 (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

17. On 11.08.2019, the respondent published a list of defaulters for payments in the daily Hindi newspaper "Gurgaon Mail". Finally, the cancellation letter has been issued by the respondent on 18.05.2020. The respondent has cancelled the unit as per the provisions of the policy and is hereby held valid. But there is nothing on record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013. Therefore, the respondent is directed to refund the paid-up amount of Rs.9,85,945/- to the complainant after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013 along with interest at the prescribed rate i.e., 11.10% per annum as prescribed under rule 15 of the Rules, 2017, on such balance amount from the date of cancellation i.e., 18.05.2020 till its actual realisation.

G. Directions of the authority

18. 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:
- The respondent is directed to refund the paid-up amount of Rs.9,85,945/- to the complainant after deduction of Rs.25,000/- as per

the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013 along with interest at the prescribed rate i.e., 11.10% per annum as prescribed under rule 15 of the Rules, 2017, on such balance amount from the date of cancellation i.e., 18.05.2020 till its actual realisation.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequence would follow.

19. The complaint stand disposed of.

20. File be consigned to registry.

Dated: 30.05.2025



V.K.
Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM