

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Complaint no. :** 1202 of 2023**Date of decision :** 20.05.2025

Mrs. Preeti Ranjan Saha
R/o: - B106, 2nd Floor, Mayfield Gardn, Baani Square,
Sector- 50, Nirvana Country, South City-2, Gurugram-
122018

Complainant**Versus**

M/s Ocean Seven Buildtech Private Limited
Regd. Office At: - 505-506, 5th Floor, B-4, Spaze I Tech
Park Sohna Road, Sector-49, Gurugram- 122018.

Respondent**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Yogesh Kilhore (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:

Sr. No.	Particulars	Details
1.	Name of the project	Golf Heights, Sector 69, Gurugram, Haryana.
2.	Project area	5.4125 Acres
3.	Nature of the project	Affordable housing project
4.	DTCP license no.	28 of 2018 dated 02.05.2018
	License valid till	01.05.2023
	Licensed area	5.4125 Acres
5.	HRERA registered/ not registered	Registered vide no. 17 of 2018 dated 12.10.2018
	HRERA registration valid up to	20.10.2023 (Including 6 months COVID extension)
6.	Building plan approval dated	20.07.2018 (As per DTCP website)
7.	Environment clearance dated	10.10.2019
8.	Date of booking	18.10.2018 [As alleged by the complainant on page 11 of complaint]
9.	Allotment letter issued in favour of complainant on	13.03.2019 (As alleged by the complainant on page 11 of complaint)
10.	Unit no.	305, 3 rd floor, Tower 4 (Page 22 of complaint)
11.	Unit admeasuring	565 sq. ft. of carpet area along with 99 sq. ft. of balcony area [Page 22 of the complaint]
12.	Builder buyer agreement	24.06.2019 [page 17 of complaint]
13.	Possession clause as per clause 5.2 of the agreement	<i>The Company shall sincerely endeavour 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</i>

		<p>payment of installments by the Allottee(s). However, in case the Company completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Agreement to Sell. The Company, on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to Sell and payments made as per Payment Plan. It is further agreed by the Allottee that the Developer shall not be liable for delay in completion of construction, in case of force majeure condition and/or the delay is caused due to non-completion of construction of said Complex/building/unit. In the event if a number Allottee(s) are not paying due installments on time or a number of Allottee(s) has withdrawn their application after allotment of unit or a number of units has been cancelled due to nonpayment of due installments or otherwise...</p> <p>[Page 29 of complaint]</p>
14.	Possession clause as per policy	<p>1(IV) of the Affordable Housing Policy, 2013</p> <p>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.</p>
15.	Due date of possession	<p>10.04.2024</p> <p>(calculated from the date of environment clearance dated 10.10.2019 being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects</p>

		having completion date on or after 25.03.2020)
16.	Total consideration	Rs.23,09,500/- [Page 23 of complaint]
17.	Amount paid by the complainant	Rs.9,35,349/- (Page 54A of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Surrender/Request to cancel allotment and refund of the amount paid by the complainant vide letter dated	01.07.2022 [Page 55 of complaint]

B. Facts of the complaint

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

- I. That the complainant, namely, Mrs. Preeti Ranjan Saha on 18.10.2018 booked a flat by paying Rs.1,15,475/- in the Affordable Group Housing project being developed by the Respondent known as "Golf Heights" located at sector - 69, Gurugram, Haryana. Thereafter respondent has allotted flat no. 305, Tower - 4, 3rd Floor, 2 BHK having carpet area 565 sq. ft. and balcony area 99 sq. ft. in the favor of complainant being a successful allottee, in the said project.
- II. That, the allotment of the unit, on 24.06.2019, the buyer's agreement was executed between the complainant and the respondent of the said unit. The complainant paid as and when demanded by the respondent a total sum of Rs.9,35,348/- inclusive of disbursed home loan amount by the HDFC Bank as the complainant has obtained the same to purchase said flat in the project.
- III. That on 01.07.2022 due to non-disbursal of home loan amount by the HDFC bank on account of slow pace of construction, the complaint desires to surrender the said flat and wrote a surrender/cancellation letter to the

Respondent and also requested to refund his amount as per clause 5(iii) (h) of Affordable Housing Policy, 2013 and the same has been received by the respondent.

- IV. That pursuant to the above, complainant time and again make numerous calls and visits in the office of respondent and requested for the refund of his money as per the provisions of Affordable Housing Policy, 2013 but the respondent did not pay any heed towards the genuine request of the complainant and started neglecting him from one pretext to other and grab the hard earned money of the complainant. Till date the respondent has failed to refund the amount of the said flat to the complainant. The complainant is left with no other efficacious remedy except to approach this Authority, prefers the complaint for addressing his grievance.
- V. That this Authority is having a pecuniary jurisdiction and territorial jurisdiction to adjudicate and try this complaint as the subject matter property is within the territorial limits of this Authority. The cause of action first arose when the respondent accepted the surrender/ letter dated 01.07.2022 of the complainant. The cause of action again arose when the respondent orally deny to refund the total amount of Rs.9,35,348/-. The cause of action is still continuing as the respondent has still not refunded the paid amount in regard to the said flat to the complainant.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the amount received by it along with prescribed rate of interest.
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 Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.
 - II. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely instalments.
 - III. That starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively. This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent. The suspension of the license and freezing of accounts, starting from Feb 2023 till date, have created a zero-time scenario for the respondent. Further, there is no delay on the part of the respondent project as it is covered under clause number 5.5 force Majeure, which is beyond control of the respondent.
 - IV. That the final EC is CTE/CTO which has been received by the respondent in February 2018. Hence the start date of project is Feb 2018 and rest details are as follows.

Covid and NGT Restrictions	
Project completion Date	Feb-22
Covid lock down waiver	18 months
NGT stay (3 months approx. for every year)i.e. 6*3	18 months
Total Time extended to be extended (18+18) months	36 months
Accounts freezed & license suspended	Feb 2023 till date

further time to be extended till the unfreezing of the accounts i.e. Feb- Nov 2023 (10 months)	Nov-23
Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	Nov-25

As per the table given above, the final date for the completion of construction is Feb 25 in case the accounts are unfreezed by the competent authority on the date of filing this reply. From Feb 2023, the license has been suspended and accounts have been freezed by the DTCP Chandigarh and HRERA Gurugram.

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

(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 in the written submission:-

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

14. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute. 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 clause. Therefore, by applying same analogy the presence of

arbitration clause could not be construed to take away the jurisdiction of the authority.

15. Further, in *Aftab Singh and ors. vs. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objections regarding force majeure.

16. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, major spread of Covid-19 across worldwide, suspension of license by the DTCP, Chandigarh and freezing of

accounts by HRERA Gurugram etc. which is beyond the control of the respondent and are covered under clause 5.5 of the agreement. The respondent has further submitted that suspension of the license and freezing of accounts, starting from Feb 2023 till date have created a zero-time scenario for the respondent. Furthermore, the final EC is CTE/CTO which has been received by the respondent in February 2018, hence the start date of project is Feb 2018. However, all the pleas advanced in this regard are devoid of merits. As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects 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. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained environment clearance and building plan approval in respect of the said project on 30.11.2017 and 26.09.2016 respectively. 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 was 30.05.2022. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Secondly, the licence of the project of the respondent was suspended by DTCP, Haryana vide memo dated 23.02.2023, due to grave violations made by it in making compliance of the terms and conditions of the licence. In view of the same and to protect the interest of the allottees, the bank account of the respondent related to the project was frozen by this Authority

vide order dated 24.02.2023. It is well settled principle that a person cannot take benefit of his own wrong

G. Findings on the relief sought by the complainant.

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

17. The complainant was allotted a unit bearing no. 305, 3rd floor, in tower-4, in the project of the respondent at the sale consideration of Rs.23,09,500/- under the Affordable Group Housing Policy 2013. The possession of the unit was to be offered within 4 years from the approval of building plans (20.07.2018) or from the date of environment clearance (10.10.2019), whichever is later, which comes out to be 10.10.2023 calculated from the date of environment clearance being later. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the project having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.11.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over of possession the due date of possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over of possession comes out to be 10.04.2024.
18. The complainant paid a sum of Rs.9,35,349/- out of the total sale. Further, the complainant has placed a letter dated 01.07.2022 on page no. 55 of the complaint wherein the complainant requested to the respondent company to *cancel allotment of unit no. 305, in tower 4 of project Golf Heights in the name of Preeti Ranjan Saha and refund of the payment of Rs.9,35,348/- made till date.* The said surrender requests letter was received by the representative of the respondent company on 01.07.2022.

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 is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"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. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 10.10.2019 is later and hence, the same would be considered as date of commencement of project.
21. Therefore, the respondent/promoter is directed to refund the paid-up amount after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @11.10% per annum from the date surrender/withdraw of allotment i.e., 01.07.2022 till the actual realization of the amount.

H. Directions of the authority

22. 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/promoter is directed to refund the paid-up amount after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @11.10% per annum from the date surrender/withdraw of allotment i.e., 01.07.2022 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.


23. Complaint as well as applications, if any, stand disposed off accordingly.

24. Files be consigned to registry.



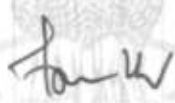
(Ashok Sangwan)

Member



(Vijay Kumar Goyal)

Member



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025



HARERA
GURUGRAM