

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

Date of order: 12.08.2025

NAME OF THE BUILDER		M/s Ocean Seven Buildtech Pvt. Ltd.
PROJECT NAME		Expressway Towers, Sector- 109, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/5498/2024	Shivani Sharma V/s Ocean Seven Buildtech Private Limited
2.	CR/5993/2024	Chetna Mathur V/s Ocean Seven Buildtech Private Limited
3.	CR/5532/2024	Subhadra Hasija V/s Ocean Seven Buildtech Private Limited
4.	CR/5986/2024	Jyoti Sharma and Pankaj Kumar V/s Ocean Seven Buildtech Private Limited
5.	CR/914/2025	Vipin Kumar V/s Ocean Seven Buildtech Private Limited
6.	CR/916/2025	Tanushri Das and Rishi Das V/s Ocean Seven Buildtech Private Limited
7.	CR/917/2025	Rajesh Kumar Mishra V/s Ocean Seven Buildtech Private Limited
8.	CR/913/2025	Dheeraj Kaushik and Upasna V/s Ocean Seven Buildtech Private Limited

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman**Member****APPEARANCE:**

Shri Bhajan Lal Jangra (Advocate)

Shri Arun Kumar (Advocate)

Complainants**Respondent****ORDER**

1. This order shall dispose of 08 complaints titled above filed before the Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **"Expressway Towers", Sector- 109, Gurugram, Haryana** being developed by the respondent/promoter i.e., **M/s Ocean Seven Buildtech Private Limited**. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Expressway Towers" at Sector 109, Gurugram.
Project area	7.5 acres
Nature of the project	Affordable group housing colony

DTCP license no. and other details	06 of 2016 dated 16.06.2016 Valid up to- 15.06.2021
Building plan approval	26.09.2016 (taken from CR/5900/2023 decided on 30.05.2025)
Environment clearance	30.11.2017 (taken from CR/5900/2023 decided on 30.05.2025)
RERA Registered/ not registered	301 of 2017 dated 13.10.2017 Valid up to 12.10.2021
Possession clause as per buyer's agreement	"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). 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."</i>
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>
Due date of possession (as per Affordable Housing Policy, 2013)	30.05.2022 (30.11.2021 plus 6 months) (Note: Due date of possession is calculated from the date of environment clearance dated 30.11.2017 being later + 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)



Occupation certificate

Not obtained

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter and BBA	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/5498/2024 Shivani Sharma V/s M/s Ocean Seven Buildtech Private Limited DOF: 04.12.2024 Reply: 04.04.2025	107, Tower-6 645 sq. ft. (carpet area) 99 sq. ft. (balcony area) (Page 29 of complaint)	Allotment: - 20.05.2017 (Page 29 of complaint) BBA 02.06.2017 (Page 30 of complaint)	TSC: Rs.26,29,500/- (as per clause 4.1 of the BBA at page 35 of complaint) AP: Rs. 20,54,299/- (As per ledger account at page no.83 of complaint) Rs.27,18,246/- (as alleged by complainant page 11)
2.	CR/5993/2024 Chetna Mathur V/s M/s Ocean Seven Buildtech Private Limited DOF: 04.12.2024 Reply: 23.07.2025	307, Tower-7 307 sq. ft. (carpet area) 69 sq. ft. (balcony area) (Page 32 of complaint)	Allotment: - NA BBA 24.05.2017 (Page 30 of complaint)	TSC: Rs.12,62,500/- (as per clause 4.1 of the BBA at page 35 of complaint) AP: Rs.8,45,897/- (As per receipts at page no.69-73 of complaint) <i>*Note: vide proceedings dated 12.08.2025 it has been inadvertently recorded as Rs.12,18,356/-</i> Rs.13,03,804/- (as alleged by complainant page 10)
3.	CR/5532/2024 Subhadra Hasija V/s M/s Ocean Seven Buildtech Private Limited DOF: 04.12.2024 Reply: 04.04.2025	005, Tower-2 324 sq. ft. (carpet area) 69 sq. ft. (balcony area) (Page 27 of complaint)	Allotment: - 01.04.2017 (Page 27 of complaint) BBA Not executed	TSC: NA AP: Rs.13,93,702/- (As per page no.28 of complaint) <i>*Note: vide proceedings dated 12.08.2025 it has been inadvertently recorded as Rs.13,93,072/-</i>
4.	CR/5986/2024	1905, Tower-3	Allotment: - 20.05.2017 (Page 28 of complaint)	TSC: Rs. Rs.26,26,000/-



	<p>Jyoti Sharma and Pankaj Kumar V/s M/s Ocean Seven Buildtech Private Limited</p> <p>DOF: 04.12.2024 Reply: 04.04.2025</p>	<p>644 sq. ft. (carpet area) 100 sq. ft. (balcony area)</p> <p>(Page 28 of complaint)</p>	<p>BBA 06.06.2017 (Page 30 of complaint)</p>	<p>(As per clause 4.1 of the BBA at page 31 of complaint)</p> <p>AP: Rs.23,83,094/- (As per page 80 of complaint)</p>
5.	<p>CR/914/2025</p> <p>Vipin Kumar V/s M/s Ocean Seven Buildtech Private Limited</p> <p>DOF: 28.02.2025 Reply: 18.07.2025</p>	<p>1104, Tower-6</p> <p>644 sq. ft. (carpet area) 100 sq. ft. (balcony area)</p> <p>(Page 30 of complaint)</p>	<p>Allotment: - 25.09.2018 (Page 30 of complaint)</p> <p>BBA 10.10.2018 (Page 35 of complaint)</p>	<p>TSC: Rs.26,26,000/- (As per clause 4.1 of the BBA at page 40 of complaint)</p> <p>AP: Rs.27,44,175/- (As per page no.87 of complaint)</p>
6.	<p>CR/916/2025</p> <p>Tanushri Das and Rishi Das V/s M/s Ocean Seven Buildtech Private Limited</p> <p>DOF: 28.02.2025 Reply: 18.07.2025</p>	<p>503, Tower-5</p> <p>645 sq. ft. (carpet area) 99 sq. ft. (balcony area)</p> <p>(Page 29 of complaint)</p>	<p>Allotment: 20.05.2017 (Page 29 of complaint)</p> <p>BBA 11.11.2017 (Page 31 of complaint)</p>	<p>TSC: Rs.26,29,500/- (As per clause 4.1 of the BBA at page 36 of complaint)</p> <p>AP: Rs.27,31,396/- (As per page no.67 of complaint)</p>
7.	<p>CR/917/2025</p> <p>Rajesh Kumar Mishra V/s M/s Ocean Seven Buildtech Private Limited</p> <p>DOF: 28.02.2025 Reply: 18.07.2025</p>	<p>407, Tower-3</p> <p>645 sq. ft. (carpet area) 99 sq. ft. (balcony area)</p> <p>(Page 29 of complaint)</p>	<p>Allotment: - 20.05.2017 (Page 29 of complaint)</p> <p>BBA 01.06.2017 (Page 32 of complaint)</p>	<p>TSC: Rs.26,29,500/- (As per clause 4.1 of the BBA at page 37 of complaint)</p> <p>AP: Rs.8,18,435/- (as per receipts on page 89-90 of complaint)</p> <p>Rs.23,77,225/- (As alleged in complaint)</p>



8.	CR/913/2025 Dheeraj Kaushik and Upasna V/s M/s Ocean Seven Buildtech Private Limited DOF: 03.03.2025 Reply: 18.07.2025	1007, Tower-5 645 sq. ft. (carpet area) 99 sq. ft. (balcony area) [Page 29 of complaint]	Allotment: - 25.09.2018 (Page 29 of complaint) BBA 13.10.2018 (Page 33 of complaint)	TSC: Rs.26,29,500/- (As per clause 4.1 of the BBA at page 38 of complaint) AP: Rs.6,14,908/- (as per receipts on page 74-75 of complaint) Rs.27,47,832/- (As alleged in complaint)
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Relief sought by the complainant(s) in abovementioned complaints: -

1. Interest for every month of delay at prevailing rate of interest from 30.05.2022 till handing over the possession of the Flat/Unit.
2. The respondent be directed to complete the project and handover the physical possession of Flat/Unit.
3. Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.
4. The possession clause no. 5.2 mentioned in Agreement to sell is in violation of the Affordable Housing Policy, 2013, hence the Respondent be directed to modify the said clause in terms of Affordable Housing Policy, 2013.
5. The respondent be directed to give completion certificate.
6. Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup Charges.
7. Directing the Respondent to give Input Tax Credit of GST by allowing refund with interest in terms of order dated 05.11.2019 passed by Hon'ble National Anti-Profitteering Authority.
8. Direct the respondent to refund the excess amount paid by the complainant over and above the sale consideration.
9. Direct the Respondent to pay compensation with interest.
10. Direct the Respondent to pay the legal expense.

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

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the

possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/5498/2024** titled as **Shivani Sharma V/s Ocean Seven Buildtech Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details.

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/5498/2024 Shivani Sharma V/s Ocean Seven Buildtech Private Limited

S. No.	Particulars	Details
1.	Name of the project	Expressway Towers, Sector 109, Gurugram, Haryana.
2.	Project area	7.5 Acres
3.	Nature of the project	Affordable housing project
4.	DTCP license no.	06 of 2016 dated 16.06.2016
	License valid till	15.06.2021
	Licensed area	7.5 acres
	License holder	Sh. Shree Bhagwan C/o M/s Ocean Seven Buildtech Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 301 of 2017 dated 13.10.2017
	HRERA registration valid up to	12.04.2022 (including 6 months COVID extension)



6.	Building plan approval dated	26.09.2016 (taken from CR/5900/2023 decided on 30.05.2025)
7.	Environment clearance dated	30.11.2017 (taken from CR/5900/2023 decided on 30.05.2025)
8.	Allotment letter	20.05.2017 (Page 29 of complaint)
9.	Unit no.	107, Tower-6 (Page 29 of complaint)
10.	Unit admeasuring	645 sq. ft. of carpet area along with 99 sq. ft. of balcony area (Page 32 of complaint)
11.	Builder buyer agreement	02.06.2017 (Page 30 of complaint)
12.	Possession clause as per clause 5.2 of the agreement	5.2 Possession Time <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 payment of installments by the Allottee(s)...</i> (Emphasis Supplied) (Page 38 of complaint)
13.	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>
14.	Due date of possession	30.05.2022 (30.11.2021 + 6 months) (Note: the due date is calculated from the date of environment clearance dated 30.11.2017 being later + 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 consideration	Rs.26,29,500/- (As per clause 4.1 of the BBA at page 35 of complaint)
16.	Amount paid by the complainant	Rs.20,54,299/- (As per ledger account at page no.83 of complaint) Rs.27,18,246/- (as alleged by complainant page 11)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint.

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

- I. That the complainant had signed and submitted an application form dated 05.01.2017 for allotment of residential flat under affordable housing policy 2013 issued by Govt. of Haryana. As per the draw held on 19.05.2017 a unit/flat no. 107 in Tower 06 on 1st floor admeasuring 645 sq. feet carpet area and 99 sq. feet balcony area was allotted against total sale consideration of Rs.26,29,500/- vide allotment letter dated 20.05.2017.
- II. Subsequent thereto, an agreement to sell dated 02.06.2017 was executed between the complainant and respondent. The respondent mischievously did not mention specific date of handing over the physical possession of the flat/unit in the agreement to sell but it is mentioned in the clause no. 5.2 of the agreement to sell that the company shall sincerely endeavour to complete the construction and offer the possession of the said unit within five years from date of receiving of licence.
- III. That the respondent obtained building plan approval on 26.09.2016 and received environmental clearance on 30.11.2017. However, the respondent delayed the project despite the payment from the complainant and poor allottee(s) who spent hard earned money in purchasing the residential flats.
- IV. That the respondent cannot override clause 1(iv) of Affordable Housing Policy, 2013 relating to possession. The said clause shall override the possession time

as mentioned by the respondent in agreement to sell since the agreement is not in accordance with the date of completion stipulated in clause 1(iv) of the Affordable Housing Policy, 2013. Hence the due date of possession is to be reckoned from environmental clearance obtained by the respondent on 30.11.2017, thus the due date of possession is 30.05.2022.

- V. That the complainant has availed a Home Loan of Rs.23,60,000/- against mortgage of the said Flat @ rate of 8.40% p.a. from Indiabulls Home Loans with monthly EMI of Rs.20,332/- for the period of 240 months. In this regard Indiabulls Home Loans had issued a Sanction letter dated 27.05.2017
- VI. Further, due to non-completion of the project as per the possession date mentioned in the builder buyer agreement an amount of Rs.2,67,280/- as subsidy of Pradhan Mantri Awaas Yojna was taken back and further India Bulls now known as Sammaan Capital started charging an interest rate of 15% per annum and also extended the tenure of loan to 347 months from the complainants.
- VII. That the complainant had already paid sum of Rs.27,18,246/- upto 03.08.2021 which is more than the agreed price of total sale consideration of the flat but the respondent had neglected to complete the project till date and no construction activity is going for the reason best known to the respondent.
- VIII. That the complainant is also entitled to Input Tax Credit of GST pursuant to the order dated 05.11.2019 in case no. 55/2019, case titled as "Shri Hardev Singh & Ors. V/s M/s Ocean Seven Buildtech Pvt. Ltd. passed by the Hon'ble National Anti- Profiteering Authority but the respondent had neglected to provide the same.
- IX. However, despite repeated request and reminders for settlement of the above in the cost and other payables by the complainant but the respondent refused to give credit of the same hence committed the violation of the said judgment.

- X. That the respondent under clause 4.9(iii) and (iv) of the Agreement to Sell has demanded Labour Cess, VAT, Work Contract Tax, Power Backup charges. Same cannot be legally demanded as has been noted by this Hon'ble Authority in Tinki Jain vs Spaze Towers Pvt. Ltd., C No. 35 of 2021 and Varun vs Emaar MGF Land Ltd. C. No. 4031 of 2019.
- XI. That there is a delay of 27 months in completion of the project as on date from 30.05.2022 to 27.09.2024. The complainant has visited several times in the office of the respondent and sent numerous mails calling upon to complete the project and handing over the possession but gave evasive reply and made illegitimate demands of money under the pretext the construction cost has gone above but were refused by the complainant. However, the complainant is ready to pay the legitimate balance demand as may be directed by this Hon'ble Authority at the time of possession.
- XII. That, the RERA registration no. 301/2017 dated 13.10.2017 of the project has also lapsed and penalty proceeding have been initiated and going on against the respondent for violation of RERA Act. The alleged acts, deed and omission the respondent have neglected to complete the project and have grossly violated affordable housing norms notified by Haryana Govt

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- a) Interest for every month of delay at prevailing rate of interest from 30.05.2022 till handing over the possession of the Flat/Unit.
 - b) The respondent be directed to complete the project and handover the physical possession of Flat/Unit.
 - c) Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.
 - d) The possession clause no. 5.2 mentioned in Agreement to sell is in violation of the Affordable Housing Policy, 2013, hence the Respondent be directed to modify the said clause in terms of Affordable Housing Policy, 2013.
 - e) The respondent be directed to give completion certificate.
 - f) Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup Charges.

10. 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.

11. The respondent is contesting the complaint on the following grounds:
- i. That the complainant is estopped from filling the present complaint by his own act, conduct, omissions, admissions, acquiescence and laches.
 - ii. That the subject matter of the present complaint is pending before the arbitration tribunal and the arbitration clause is accepted, agreed and signed by the complainant in the Builder buyer agreement. Hence, the present complaint may kindly be dismissed and the complainant be directed to present before the arbitral tribunal as per Section 8 of the arbitration and conciliation act, 1996.
 - iii. 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, 2016. The complainant failed to clear his outstanding dues despite several reminders that were issued by the respondent.
 - iv. The complainant has engaged in unlawful conduct, including but not limited to making false and baseless allegations, spreading misinformation, and engaging in defamatory practices. These actions go beyond the realm of contractual disputes and suggest a deliberate attempt to harm the reputation and business interests of the respondent company. This act and unlawful conduct of the complainant at various platforms led to the life threat to the Promoters/Directors and their respective families.
 - v. 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.

- vi. 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.
- vii. That in case cancellation notice by the respondent has been issued to the complainant and given time has been expired and thereafter the complainant by manipulation and in collusion with the bank or any staff of respondent company and got the funds transferred in the respondent company account and got the receipt from the company, it does not mean that cancellation has been revived in any manner whatsoever.
- viii. The complainant has not paid the outstanding instalments with interest for that very reason. The respondent company has cancelled his units and allotted the same to some other buyer who has faith and trust in the budget and company and agreed for the timely payment of the instalments.
- ix. 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. We, therefore, request that this matter be referred to arbitration in accordance with the terms set forth in the agreement.
- x. Contrary to the complainant's claims, the complainant has failed to make timely payments as agreed, and his actions have been defamatory in nature, causing significant harm to respondent company, its promoters, and ongoing/future

projects. Consequently, the respondent has filed a counterclaim against the complainant, seeking redress for the losses incurred.

- xi. As per the arbitration clause contained in the agreement. Furthermore, the respondent assert his rights under Clause 16.2 of agreement to sale and reserve the right to pursue remedies available under the law.
- xii. That the complainant has no right title and interest to file the complaint on the basis of false, fabricated and concocted story and wrong facts put forth. Moreover, the said power of attorney is not a registered document and unregistered document is not admissible before the court. The said special power of attorney cannot be used to file any complaint/affidavit/submission before the Authority. Therefore, the said complaint is liable to be dismissed.
- xiii. That the complainant had signed and submitted an application and draw of flats/units were conducted in the presence of govt. officers. It is denied that the complainant was allotted a flat against total sale consideration of Rs.26,29,500/- plus GST. On contrary, as mentioned in 4.1 of the agreement, the total amount of the unit will come after adding the maintenance, electric connection, and other statutory dues against the unit of the complainant and has to be calculated at the time of possession along with the GST, delay payment interest and other taxes applicable at the time which has been agreed by the complainant in the application form as well as buyer's agreement duly signed by complainant.
- xiv. It is clearly mentioned in the agreement that the allottee has applied under Affordable Housing Policy-2013 and the said project is be developed in accordance to the above said policy. As per the agreement, the allottee was made aware of all the approvals/sanctions/ information and clarification in regards to the development of the project as well as the possession of the unit.
- xv. That as per table, the final date for the completion of construction is Feb 25 in case the accounts are unfreezed by the competent authority. From the Feb 2023,

the license has been suspended and accounts has been freezed by the DTCP Chandigarh and HRERA Gurugram.

Covid and NGT Restrictions	
Project completion Date	Feb-22
Covid lock down waiver	18 months
NGT stay waiver (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-Mar 2024 (13 months)	Mar-24
Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	March-26

- xvi. As per clause 5(iii)(b) of the affordable housing scheme and as per the agreement, the possession of flats is to be offered within a period of 4 years from the date of sanctioning of building plan or from the date of issuance of environment clearance certificate whichever is later and the final EC is CTE/CTO that was received on Feb 2018. Hence the start date of project is February 2018:
- xvii. It is denied that the complainant had already paid sum of Rs.27,18,246/-. On contrary, the burden of proof lies with the complainant to substantiate the alleged payment. The complainant must provide clear and unequivocal evidence to support their claim. No certified bank statement has been attached to the complaint as evidence of the alleged payment. The absence of such documentation raises questions about the veracity of the claim. The respondent emphasizes that the complainant cannot solely rely on letters or emails from the respondent as proof of payment. Such communications may not be conclusive evidence of a financial transaction.
- xviii. The complainant must produce their own certified bank statement as evidence of the alleged payment. This bank statement should clearly demonstrate the transactions related to the amount in question. The respondent commits to relying upon the complainant's bank statement as the primary evidence to

evaluate the alleged payment. However, until such documentation is provided, the respondent disputes the existence of the payment.

- xix. That the complainant has no legitimate right, title, or interest to claim relief restraining the respondent from demanding the aforementioned charges. The project has not been completed yet, and no cause of action has arisen for the complainant to file a complaint based on false, fabricated, and erroneous grounds. The respondent maintains the right to operate in accordance with the agreed-upon terms and conditions.
- xx. 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, rendering the completion of construction by the stipulated date of February 25, 2023, practically impossible.
- xxi. The suspension of the license and freezing of accounts, starting from Feb 2023 till date, have created a zero-time scenario for the respondent. Without access to funds, the respondent is unable to continue construction activities, a circumstance compounded by the requirement of funds to be deposited in the RERA account as mandated by the RERA Act. Unfortunately, the RERA Gurugram has frozen the said account, leaving the respondent without the financial means necessary to fulfill its contractual obligations.
- xxii. That the complainant is fully aware of all the material facts pertaining to the status of the project. The construction of the said project is proceeding in full force despite the suspension of the license and other force majeure events. The respondent remains committed to completing the project within the stipulated time frame, taking into account the hurdles caused by force majeure circumstances and the actions and omissions of the complainant. The construction work has been completed upto 90% despite the force majeure

circumstances of including the COVID-19 lockdown, the ban imposed by the National Green Tribunal (NGT) on construction activities, the farmer agitation, and additional obstructions deliberately created by the Complainant which resulted in the suspension of the project's license. The present complaint is premature and is liable to be dismissed with cost.

12. All other averments made in the complaint were denied in toto.
13. 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.

14. 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

15. 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

16. 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.

17. 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 objections raised by the respondent.

F.I Objection regarding cancellation.

18. The respondent vide its reply has contended that the complainant has not paid the outstanding installments with interest. For that reason, the respondent has cancelled the subject unit and allotted to some other buyer. However, as per record, the complainant is not at default and has paid a considerable amount of money towards the sale consideration of the unit. Further, there is no document available with regard to cancellation on record to substantiate the claim of the respondent. It is pertinent to note that in neither of the complaints the respondent has placed any relevant document with regard to the cancellation of respective units. Accordingly, the claim of the respondent is rejected being devoid of merits.

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

19. 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.

20. 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.

21. Also, the respondent has contended that the matter is pending before Arbitration Tribunal and the arbitration clause is accepted. In neither of the complaints the respondent has placed any relevant document with regard to the matter pending before the arbitration tribunal. Accordingly, the said objection is also rejected being devoid of merits.

F.II Objections regarding force majeure.

22. 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 Interest for every month of delay at prevailing rate of interest from 30.05.2022 till handing over the possession of the Flat/Unit.

G.II The respondent be directed to complete the project and handover the physical possession of Flat/Unit.

G.III Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.

G.IV The possession clause no. 5.2 mentioned in Agreement to sell is in violation of the Affordable Housing Policy, 2013, hence the Respondent be directed to modify the said clause in terms of Affordable Housing Policy, 2013.

23. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

24. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

25. Clause 5.2 of the buyer's agreement provides for time period for handing over of possession and is reproduced below: -

"5.2 Possession Time

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 instalment's 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."

26. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is not only in grave violation of clause 1(iv) of the Affordable Housing Policy, 2013, but also deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

27. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"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 the policy."

28. Due date of handing over of possession: 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 comes out to be 30.05.2022.

29. Admissibility of delay possession charges at prescribed rate of interest: Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been 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]

(1) 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.

30. The legislature in its wisdom in the subordinate legislation under the provision of 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.

31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.08.2025 is **8.90%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.90%**.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
34. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the respondent/promoter shall be necessarily required to complete the construction of the project within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Therefore, in view of the findings given above, the due date of handing over of possession was 30.05.2022. However, the respondent has failed to handover possession of the subject unit to the complainant till the date of this order. Accordingly, it is the

failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Moreover, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees

35. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
36. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favor of the complainant in terms of Section 17(1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

G.V The respondent be directed to give completion certificate.

37. As it is evident from the record, the respondent has not yet obtained the occupation/completion certificate from the competent authority. Therefore, no direction in this regard can be issued at this stage.

38. However, as per Section 11(4)(b) of Act of 2016, the respondent/builder is under an obligation to supply a copy of the occupation certificate/completion certificate or both to the complainants/allottees. The relevant part of Section 11 of the Act of 2016 is reproduced as hereunder: -

"11(4) (b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

39. Even otherwise, it being a public document, the allottees can have access to it from the website of DTCP, Haryana once it is issued by the competent authority.

G.VI Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup Charges..

40. The complainant has sought the relief to restrain the respondent from demanding Labour Cess, VAT, WCT and power backup charges. Although, as per record, no demand under the above said heads have been made by the respondent till date, however in clause 4.9 (iii) and (iv) of the buyer's agreement dated 17.06.2017, it has been mentioned that the allottee is liable to pay separately the above-said charges as per the demands raised by the respondent company. Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Labour Cess:-** The Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the



authority in complaint bearing no. 962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **VAT:-** The promoter is entitled to charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis-à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.
- **WTC (work contract tax):-** The complainant is seeking above mentioned relief with respect to restraining the respondent from demanding Work Contract Tax. At this stage, it is important to stress upon the definition of term 'work contract' under Section 2(119) of the CGST Act, 2017 and the same is reproduced below for ready reference:

"(119) – works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property

in goods (whether as goods or in some other form) is involved in the execution of such contract;"

After considering the above, the Authority is of the view that the complainant/allottee is neither an employer nor a contractor and the same is not applicable in the present case. Thus, the complainant /allottee cannot be made liable to pay the same to the respondent.

- **Power Backup Charges:-** The issue of power back-up charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in affordable group housing colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can only charge maintenance/use/utility charges from the complainant-allottees as per consumption as prescribed in "category-II" of the office order dated 31.01.2024.

G.VII Directing the Respondent to give Input Tax Credit of GST by allowing refund with interest in terms of order dated 05.11.2019 passed by Hon'ble National Anti-Profiteering Authority.

41. The complainant has sought the relief with regard to direct the respondent to give anti-profiteering credit/input tax credit to the complainants and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

42. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

G.VIII Direct the respondent to refund the excess amount paid by the complainant over and above the sale consideration.

43. In CR/5993/2024, CR/5532/2024, CR/914/2025 and CR/913/2025 the complainants have sought relief for directing the respondent to refund the excess amount paid by the complainant beyond the agreed sale consideration. As per clause 4.1 of the buyer's agreement the sale consideration/sale price of Rs.12,62,500/- shall be payable as per the payment plan annexed as annexure-B, GST, service Tax, VAT, and other levies, duty if applicable shall be payable by the allottee over and above the sale consideration. Further, it was also agreed the service tax/VAT and other applicable taxes and charges of any nature whatsoever, which may be levied by the Government Authorities with prospective and retrospective effect shall be payable by the allottee over and above sale consideration mentioned herein above. The relevant clause 4.1 of the BBA is reproduce herein below:-

ARTICLE 4
SALE CONSIDERATION

4.1 Sale Price

That the allottee agrees to pay the company for the purchase of the said flat/ unit a sum of Rs.12,62,500/- admeasuring 307 sq. ft. (calculated @ Rs.4,000/- per sq. ft. of carpet area of the said unit, admeasuring 69 sq. ft. and balcony area calculated @ Rs.500/- per sq. ft. attached with the flat admeasuring sq. ft.), (hereinafter referred to as "Sale Price/Sale consideration") shall be payable as per the payment plan annexed as 'Annexure 'B' (hereinafter referred as "payment plan"), G.S.T, Service tax, VAT any other levies duty if applicable shall be payable by the allottee over and above the sale consideration. EDC shall be payable as per the said policy. The two wheeler parking shall be identified and allocated by the company at the time of handing over of possession of the unit to the Allottee. The Service tax/VAT and all other applicable taxes and charges of any nature whatsoever, which

may be levied by the Govt. Authority with prospective and retrospective effect shall be payable by the allottee over and above sale consideration mentioned herein above.

44. In view of the above clause, the Authority observes that the sale consideration is exclusive of GST, Service Tax, VAT, and other levies, duty if applicable and the respondent is well within right to claim such amount as agreed between the parties and the same shall be payable by the allottee over and above the sale consideration. However, the respondent is directed to furnish the details of payment of such taxes paid to the concerned Authority. If the respondent /promoter failed to provide the details of taxes as well as applicable charges as per the law of land then the respondent shall refund the excess amount. Accordingly in the all the matter mentioned in para 3 of the order the respondent is liable to refund the excess amount if any charged by the complainant.
45. It is pertinent to note that in CR/5532/2024, neither party has placed on record any Builder-Buyer Agreement executed between them to consider the sale consideration. However, the respondent is obligated to charge only as per the Affordable Housing Policy, 2013.

G.IX Direct the Respondent to pay compensation with interest.

G.X Direct the Respondent to pay the legal expense

46. The complainants are seeking relief w.r.t litigation expense. *Hon'ble Supreme Court of India* in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* 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.

H. Directions of the Authority.

47. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the

promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 30.05.2022 till the date of order by the Authority shall be paid by the respondent/promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent/promoter is directed to supply revised statement of account after adjusting delay possession charges within a period of 30 days to the complainant. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same rate of interest which the

promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

vi. The respondent/promoter shall not charge labour cess as well as work contract tax from the complainant-allottee.



vii. The respondent/promoter can charge VAT from the complainant where the same was leviable, at the applicable rate, if they have not opted for composition scheme. Further, the promoter shall charge actual VAT from the complainant paid by it to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis-à-vis the total area of the particular project. The complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

viii. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under the Affordable Housing Policy, 2013.

48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.

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

50. Files be consigned to registry.


(Ashok Sangwan)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025