

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of Order: 01.08.2025**

Name of the Promoter		Martial Buildcon Pvt. Ltd. & M3M India Private	
Project Name		The Venetian	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/5523/2024	Satyavir Singh V/s Ocean Seven Buildtech Pvt. Ltd.	Priyanka Agarwal (Complainant) Arun Yadav (Respondent)
2.	CR/5524/2024	Manoj Kumar Kakar V/s Ocean Seven Buildtech Pvt. Ltd.	Priyanka Agarwal (Complainant) Arun Yadav (Respondent)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of 7 complaints titled as above filed before this Authority in form CRA 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 between 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, "THE VENETIAN" at Sector 70, Gurugram being developed by the

respondent/promoter i.e., Ocean Seven Buildtech Private Limited. The terms and conditions of the builder 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 etc.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "The Venetian" at Sector 70, Gurugram	
Possession clause in Affordable Housing Policy-	
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.	
1. Date of sanction of building plans- Date of sanction of building plans is 07.02.2020. 2. Date of grant of environmental clearance-NA . 3. Due date of handing over of possession- NA 4. Occupation certificate- Not obtained 5. DTCP License no. 103 of 2019 dated 05.09.2019- Shree Ratan Lal and others is the licensee for the project as mentioned in land schedule of the project. 6. RERA registration – 39 of 2020 dated 27.10.2020 valid upto 02.09.2024.	

Sr. No.	Complaint no./title/ date of filing complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/5523/2024 Satyavir Singh V/s Ocean Seven Buildtech Pvt. Ltd. DOF-29.11.2024	Reply received on 02.05.2025	302, Tower -3, (Page 78 of complaint)	Not executed	Cannot Ascertained Offer of possession- Not offered	TSC: Rs.22,84,000 /- (As per Demand letter on page 78 of complaint) AP: Rs.8,83,785/- (As per Demand letter on page 78 of complaint)	Refund and interest on paid up amount

2.	CR/5524/2025 Manoj Kumar Kakar V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 29.11.2024	Reply received on 02.05.2025	802, Tower-1 (Page 74 of complaint))	Not executed	Cannot Ascertained Offer of possession- Not offered	TSC: Rs. 22,84,000 /- (As per Demand letter on page 74 of complaint) AP: Rs. 8,83,785/- (As per Demand letter on page 74 of complaint)	Refund and interest on paid up amount
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOF- Date of filing complaint

TSC- Total Sale Consideration

AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant(s) against the promoter on account of violation of the agreement executed between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges etc.
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 promoter, 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 also similar. Out of the above-mentioned case, the particulars of lead case **CR/5523/2024 titled as Satyavir Singh V/s Ocean Seven Buildtech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

A. Project and unit related details

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

CR/5523/2024 titled as Satyavir Singh V/s Ocean Seven Buildtech Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	The Venetian, Sector- 70, Gurugram, Haryana
2.	Project area	5.10 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and validity status	103 of 2019 dated 05.09.2019. Valid up to 04.09.2024
5.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020. Valid up to 02.09.2024
6.	Allotment letter	09.03.2021 [Page 74 of complaint]
7.	Builder buyer agreement	Not executed
8.	Flat no.	302, tower 3 [Page 74 of complaint]
9.	Unit admeasuring	571.105 sq. ft. (carpet area) 98 sq. ft. (balcony area) [Page 74 of complaint]
10.	Possession clause as per Affordable housing policy, 2013	<i>1(IV) of the Affordable Housing Policy, 2013</i> <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>

11.	Building plan approval dated	07.02.2020 (As per DTCP website)
12.	Environment clearance dated	Not yet obtained
13.	Due date of possession	Cannot ascertained
14.	Total sale price of the flat	Rs. 22,84,000/- [As alleged by the complainant at page 78 of complaint]
15.	Amount paid by the complainant	Rs. 8,83,785/- [As per demand letter at page 78 of complaint]

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the complainant is a law-abiding citizen of India who has been cheated by the malpractices adopted by the respondent who is stated to be a builder and is allegedly carrying out real estate development, since many years, the complainant got interested in the project as it was an affordable group housing project.
- II. In 2020, the respondent company issued an advertisement announcing an affordable group housing, in view of such advertisement, complainant applied for the residential unit in the project "THE VENETIAN" situated at Sector 70, Gurugram, Haryana, in a land parcel admeasuring a total area of approximately 5.10 acres of land, under the registration no.39 of 2020 dated 27.10.2020, issued by RERA, Haryana, and thereby invited applications from prospective buyers for the purchase of unit in the said project. The complainant is a law-abiding citizen, currently residing at the above-mentioned address.

- III. That the complainant is an allottee within the meaning of section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent company is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- IV. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant, the complainant booked a flat in the aforesaid project bearing no. 302, TYPE-1, 2 BHK, Tower-3 in Sector 70, Gurugram, Haryana having carpet area measuring 571.105 sq. ft. approx., balcony area 98 sq.ft approx, by paying a booking amount of Rs. 1,16,671 and the same was acknowledged by the respondent.
- V. That the respondent sent an allotment letter, on dated 09.03.2021 to complainant confirming the booking of the residential apartment Flat no. 302, TYPE-1, 2 BHK, Tower-3, having carpet area 571.105 sq ft and Balcony 98 sq ft, and further, raised second demand of Rs. 4,72,518/-.
- VI. That as per the Haryana Affordable Housing Policy 2013, the basic sale price of the unit was Rs. 4000/- per sq. ft. for carpet area & Rs. 500/- per sq. ft. for balcony area, which comes out to be Rs. (22,84,420 + 49,000), i.e., Rs. 23,33,420/- The complainant paid the said amount as demanded by the respondent company.
- VII. That the respondent raised a demand by issuing demand letter dated 26.08.2021 to the complainant against the

aforesaid unit of rs. 2,94,596/- and the same was paid by the complainant.

- VIII. That the complainants kept on requesting the respondent to execute agreement to sell for their allotted unit, however, the respondent company kept on using dilly-dallying tactics.
- IX. Further it is stated that the complainant had paid Rs.8,83,785/- till date to the respondent which is more than 10% of the basic sale consideration of Rs. 23,33,420/-
- X. That the respondent raised illegal demand by issuing demand letter to the complainant to clear the dues of Rs.2.94,596/-. Thereafter complainant visited the site and astonished to find that the project site is still in raw condition and barely any construction work is going on.
- XI. That the complainant on various occasions tried to initiate communication with the respondent for refund but all the efforts went in vain.
- XII. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
- XIII. That complainant requested the respondent to inspect the unit before complainant pay any further amount and requesting to provide the car parking space no but respondent failed to reply.
- XIV. That complainant sent various emails to the respondent raising various issues in relation to the said unit and asking

the reason for delay in completing the construction of the project and time line within which possession will be handed-over to the complainants and challenging the various illegal and one-sided demands letters sent to the complainant but respondent till date has failed to provide any satisfactory response to the complainant.

- XV. The respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.
- XVI. The above said acts of the opposite party clearly reveal that the "opposite party" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such Act and omissions on the part of the opposite party has caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in accordance to its misrepresentations and owing to all the deliberate lapses on the part of the "opposite party", the opposite party is liable to make as being requisitioned/claimed by the complainant.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- Direct the respondents to refund the entire paid amount along with interest at the rate prescribed by the act from the date of each payment till the actual realisation.

- ii. Direct the respondent not to raise any illegal demands in respect to the unit in question.
 - iii. Direct the respondent not to create third-party interest in the unit in question.
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 vide its reply dated 02.05.2025 has contested the complaint on the following grounds:
- a. That this authority lacks jurisdiction to adjudicate upon the present complaint. Both parties have executed an arbitration clause, clearly outlined in the agreement, empowering either party to seek resolution through arbitration. As per the said arbitration clause, any disputes arising out of the agreement shall be submitted to an arbitrator for resolution. Therefore, the present matter be referred to arbitration in accordance with the terms set forth in the agreement.
 - b. That as expressly stipulated in the agreement to sale, the parties, herein, the complainant and respondent, have unequivocally agreed to resolve any disputes through arbitration. This agreement to sell is fortified by clause 16.2 wherein it is stated that all or any disputes arising out of or touching upon or relating to the terms of this agreement to sell/conveyance deed including the interpretation and validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled despite best efforts, shall be settled through arbitration. The arbitration proceedings shall be governed by the

Arbitration and conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at the office of the company in Gurgaon by a sole arbitrator who shall be appointed by the company. The cost of the arbitration proceedings shall be borne by the parties equally. The language of arbitration shall be in English. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon, Haryana as well as of Punjab and Haryana High court at Chandigarh. That the respondent has not filed his first statement before this court in the subject matter.

- c. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments. The complainant is a defaulter under section 19(6) & 19(7) of the Act. It is humbly submitted that the complainant failed to clear his outstanding dues despite several reminders that were issued by the respondent.
- d. That the complainant's motives are marred by malafide intentions. The present complaint, founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. The complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint. This action is not only illegal and unlawful but also goes against the principles of natural justice.

12. 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

13. 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

14. 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

15. 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.

16. 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.

F. Findings on the objections raised by the respondent:

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

17. 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.
18. Further, in **Aftab Singh and ors. v. 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.

G. Findings on the reliefs sought by the complainant:

G.I Direct the respondents to refund the entire paid amount along with interest at the rate prescribed by the act from the date of each payment till the actual realization.

G.II Direct the respondent not to raise any illegal demands in respect to the unit in question.

G.III Direct the respondent not to create third-party interest in the unit in question.

19. 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.

20. The complainant applied for booking of 2 BHK Flat vide application no. 3833, dated 21.12.2020 annexed at page 71 of the complaint, thereafter the complainant was allotted a unit in the project namely "The Venetian" unit no.302, tower-3, area admeasuring 571.105/- sq.ft. (carpet area) at the rate of Rs. 4000/- as per the demand letter annexed at page 74 of the complaint. The complaint states that he received allotment/demand letter on 09.03.2021 annexed at page 74 of the complaint and that no BBA was executed by the respondent. As per clause 1(iv) of the policy of 2013, all projects under the said policy shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Thus, the possession of the unit was to be offered within 4 years from the approval of building plans (07.02.2020) or from the date of environment clearance (not obtained yet). Therefore, the due date of possession cannot be ascertained. As per record, the complainant has paid an amount of Rs.8,83,785/- to respondent. Due to failure on the part of the respondent in obtaining environment clearance from the concerned authority and inordinate delay on part of the respondent to start construction of the project in question, the complainant has filed the present complaint seeking refund of the amount paid alongwith interest at prescribed rate.
21. Clause 5 (iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015 provides that if the licensee fails to get environmental clearance even after one year of holding draw, the licensee is liable to refund the amount deposited by the applicant along with an interest of 12%, if the allottee so desires. The relevant provision is reproduced below for ready reference:

"The flats in a specific project shall be allotted in one go within four months of the sanction of building plans. In case, the number of applications received is less than the number of sanctioned flats, the allotment can be made in two or more phases. However, the licensee

will start the construction only after receipt of environmental clearance from the competent authority.

The licensee will start receiving the further installments only once the environmental clearance is received. Further, if the licensee, fail to get environmental clearance even after one year of holding of draw, the licensee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."

22. Further, as per amendment dated 09.07.2018 in Affordable Group Housing Policy, 2013, the rate of interest in case of default shall be as per rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. Rule 15 of the rules is reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

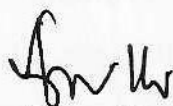
23. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Thus, the complainant-allottee is entitled to refund of the entire amount deposited along with interest at the prescribed rate as per aforesaid provisions laid down under Affordable Housing Policy, 2013.
25. Hence, the respondent/promoter is directed to refund the entire paid-up amount as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, along with prescribed rate of interest i.e., @ 10.90% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date being 8.90+2%) [Note: during proceeding dated 25 07.2025, the rate of interest was inadvertently

mentioned as 11.10% instead of 10.90%] as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the entire paid-up amount as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, along with prescribed rate of interest i.e., @ 10.90% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual realization of the amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
27. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
28. The complaints stand disposed of.
29. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 01.08.2025