

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

**Complaint no.:** 5327 of 2024  
**Date of filing:** 20.11.2024  
**Date of order:** 19.08.2025

1. Mr. Ankit Kumar Singh  
2. Mrs. Kiran Singh  
**R/o:** H No. 74, Harbala ki Dhani, Sector-  
78 Vill-Rampura, PO-Shikhopur, Distt-  
Gurgaon-122004

**Complainants**

Versus

Ocean Seven Builtech Pvt. Ltd.  
**Corporate office:** 505-506, 5<sup>th</sup> Floor,  
Tower B-4, Spaze I-Tech Park, Sohna  
Road, Gurugram-122018

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman**  
**Member**

**APPEARANCE:**

Sh. Harshit Batra (Advocate)  
Sh. Arun Yadav (Advocate)

Complainants  
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 provision of the Act or the

Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*

#### A. Project and unit related details.

2. 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:

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	25.09.2018 (Page 24 of complaint)
9.	Unit no.	302, Tower-7 (Page 24 of complaint)
10.	Unit admeasuring	307 sq. ft. of carpet area along with 69 sq. ft. of balcony area (Page 24 of complaint)
11.	Builder buyer agreement	10.12.2018 (Page 27 of complaint)
12.	Possession clause as per clause 5.2 of the agreement	<b>5.2 Possession Time</b>

		<p><i>The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit <b>within five years from the date of the receiving of license ("Commitment Period")</b>, but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s)...</i></p> <p><b>(Emphasis Supplied)</b></p> <p>(Page 38 of complaint)</p>
13.	Possession clause (As per Affordable Housing Policy, 2013)	<p><b>1(IV) of the Affordable Housing Policy, 2013</b></p> <p><i>All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building plans or grant of environmental clearance, whichever is later</b>. 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></p>
14.	Due date of possession	<p><b>30.05.2022</b></p> <p>(30.11.2021 + 6 months)</p> <p>(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)</p>
15.	Total consideration	<p>Rs.12,62,500/-</p> <p>(As per clause 4.1 of the BBA at page 32 of complaint)</p>
16.	Amount paid by the complainant	<p>Rs.13,19,320/-</p> <p>(as per ledger account at page no.75 of complaint)</p>
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint.

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

- I. That relying on the assurances, promises, representations and warranties of the respondent, the complainant decided to make a booking in the project having total sale consideration of Rs.12,62,500/-. Consequently, the

respondent raised the following demands and the complainant, till date complainant has made payment of Rs.13,19,320/-.

- II. That the co-owner Mrs. Kiran Singh passed away on 27.04.2021 due to Covid-19.
- III. That the gigantic promises made by the respondent with respect to the developing status, the speedy procurement of licenses and delivery of possession all turned be bogus and a sham with the actual intent to misappropriate monies from the innocent buyers. Since almost 6 years, the respondent has wrongfully enjoyed a huge sum of money paid by the complainant with a desire of getting the unit in his name for his personal and domestic use. The promises, assurances and warranties made by the respondent were broken in the most unlawful and illegal manner.
- IV. That the respondent has intentionally caused wrongful gains to itself and wrongful losses to the complainant when in fact the complainant has deposited his hard-earned money by being ensnared in the false lucrative and sham promises of the respondent, when in fact, the respondent never intended to make any allotment in favour of the complainant.
- V. That the respondent has acted in the most unlawful and illegal manner and has violated many provisions of the act. After the allotment of the unit, a builder buyer agreement was given to be executed. The complainant was made to sign the one-sided arbitrary agreement the terms and conditions of which were fixed and could not have been altered. The respondent had deviated from the terms and conditions of the Affordable Housing Policy, under the said agreement and had malafidely attempted to force its own terms and conditions over the complainant. The due date of possession has been malafidely extended over and above the timelines mentioned in the Affordable Housing Policy, 2013. In case of delay in payment, 15% of interest is charged from the complainant

under clause 4.5 however, no payment of interest has been noted in case of delay by the respondent. The respondent takes away the right for raising objections in case of alteration in layout plan and design under clause 4.8 of the agreement. Labour cess, VAT and WTC have been noted under clause 4.9(iii), however, the same cannot be legally charged.

- VI. That the respondent had unilaterally, unlawfully and arbitrarily extended the due date under the agreement by going beyond the Policy, 2013, which under no circumstance whatsoever, can be accepted.
- VII. That under the Section 1(iv) of the Affordable Housing Policy, 2013, the possession of the unit was to be delivered within 4 years from the approval of building plan or grant of environmental clearance, whichever is later. Hence, the due date needs to be computed from the affordable housing policy, 2013. Hence, computing the due date from 30.11.2017 it comes out to be 30.05.2022.
- VIII. That till date, the possession has not been offered and the project is far from completion. No occupancy certificate has been applied till date and the essential services are incomplete in the project. The entire aim of creating affordable living has been miserably violated by the respondent, due to its inordinate delay. Thus, there is a delay of more 2 years and the respondent has failed to offer a valid possession and compensation for the delay in offer of possession.
- IX. That the respondent failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the concerned laws, rules, and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project as and when inquired by the complainant. Thereafter, the malafide conduct and unlawful activities of the respondent continued which has consequently led the complainant to go through mental agony and financial distress. Taking advantage of the dominant



position and mala fide intention had restored to unfair trade practices by harassing the complainant by way of delaying the project by diversion of the money from the innocent and gullible buyer.

- X. That in case of delay in the offer of possession, the complainant has a right under proviso of Section 18 of the Act to seek delay possession charges till the actual handover of possession.
- XI. That accordingly, the respondent is bound to make the payment of interest on the amount deposited by the complainant till the actual handover of possession. The complainant has a statutory right under Section 18 of the Act, which, cannot go unnoticed.
- XII. Hence, for the delay caused in offering the possession, the respondent is liable to pay the complainant the delay possession charges from the due date of possession i.e., 30.05.2022 till actual handover of physical possession after the receipt of occupancy certificate.
- XIII. That it is the failure of the promoter to fulfil his obligations, and responsibilities as to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4) (a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at the prescribed rate of interest from the due date till the physical handover of possession as per provisions of section 18(1) of the Act.
- XIV. That the GST was implemented on 01.07.2017. Thereafter, w.e.f. 01.04.2019, the rates of imposition of GST were revised. For an Affordable Housing Project, the rate that can be charged from the allottee 1% without input tax credit or 8% with input tax credit
- XV. That the promoter was given an option to either charge GST at the new rates or continue charging the same at the old rates. That the promoter has been

charging GST @ 8% from the complainant, as is also evident from the demand letters issued to the complainants however no input tax credit/ITC has been given to the complainant. The demand letters and receipt annexed herewith show the complete payment made by the complainant. Despite having made the payment of the lawful demands, no input tax credit, or profiteering benefit has been granted to the complainant.

- XVI. That the respondent has been acting in utmost malafide and depriving the complainant from enjoying the benefits reserved to him in law and by the government. The respondent has always attempted to financially crunch the complainant and take undue benefits over wrongful gain to the complainant, all of which cannot be accepted, under any circumstance whatsoever.
- XVII. That as per the Affordable Housing Policy, 2013 (read with amendment dated 04.01.2021 vide Memo No. PF-27(VOL-III)/2020/2-TCP/41), the parking space is to be provided at the rate of half Equivalent Car Space (ECS) for every unit, and it is unclear as to what amount of parking charge has been levied. Looking at the utter malafide activities of the Respondent, the Complainant seeks clear bifurcation of the total sale price, including the charge of parking. That in the circumstance, it is seen that an excessive charge is being demanded by the respondent builder.
- XVIII. That moreover, as per the amended Affordable Housing Policy, additional car parking can be provided/sold after deriving consent of 2/3rd of the allottees.
- XIX. That in complete violation of the same, the builder has been selling the car parking at exorbitant rates and encroaching upon the common areas of the Project. The builder should be restrained from carrying such illegal, malafide and unlawful activities in violation of the Affordable Housing Policy, 2013.

- XX. That it is a settled position of law that in affordable housing projects, the builder is bound to maintain the Project for a span of 5 years from the date of occupancy certificate.
- XXI. That the Respondent, under the Clause 4.9(iii) and (iv) of the Agreement has demanded: Labour Cess, VAT, Work Contract Tax, Power Backup charges
- XXII. That the respondent seeks to put the additional burden of these costs over the complainant when the same is bound to be paid by the respondent only. Accordingly, the respondent be restrained from raising any such demand from the complainant.
- XXIII. That the conduct of the respondent has been malafide since the very beginning. Despite having gravely defaulted in the construction of the unit, the material being used for construction is sub-par, excess monies are being collected from the allottees, the builder has been committing misappropriation of funds, and stands in violation of the DTCP norms and the mandatory compliance under the RERA Act.
- XXIV. That in September 2022, the DTCP had also recommended the cancellation of the license of the projects of the Respondent due to its continuous non-compliance. Thereafter, vide another meeting of the allottees, conducted on 04.11.2022, with the Chairman, STP, Gurugram, all of the said issues were categorically highlighted. The Chairman had also suggested the allottees to approach HRERA for redressal of bilateral issues i.e., forensic financial audit etc. Additionally, the Respondent was directed to not sell car parking over the common areas and was required to submit the approved site plan, showing the parking space.
- XXV. That the registration of the project has been expired since 12.10.2021 and the same has not been renewed till date. That accordingly, the respondent had



committed default of Section 6 of the RERA Act and hence, penal proceedings in this regard be initiated against the respondent.

XXVI. That moreover, after an inordinate delay in the project, no specific date for handing over of the possession has been undertaken by the respondent and hence, the respondent should be directed to provide on affidavit, the date by when the valid and legal offer of possession shall be made by the respondent.

**C. Relief sought by the complainant: -**

4. The complainants have sought following relief(s):

- a) Direct the respondent to provide a valid Physical Possession after receipt of Occupancy Certificate.
- b) Direct the respondent to give delayed possession charges @ MCLR+2% from due date of possession till the date of actual physical possession at the prescribed rate of interest
- c) Direct the respondent to execute the Conveyance Deed after offering valid offer of possession to the Complainant
- d) Direct the respondent to give anti-profiteering credit/tax credit to the Complainant.
- e) Restrain the respondent from demanding Labour Cess, VAT, Work Contract Tax and Power Backup charges.
- f) Direct the respondent to give bifurcation of the total sale price including the clarification of cost of parking under the Affordable Housing Policy, 2013.
- g) Restrain the Respondent from demanding car parking charges from the Complainant.
- h) Restrain the respondent from charging any maintenance charges in future as the Complainant is not bound to pay the same under the Affordable Housing Policy, 2013.
- i) To take action for violation of section 6, i.e., non-extension of registration of the Act.

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 the complaint filed by the complainant is not maintainable before this Authority as there is arbitration clause 16.2 and according to said clause in case

of any dispute between the parties, the matter shall be referred for arbitration as per Arbitration and Conciliation Act, 1996 and an arbitrator shall be appointed by the company. Builder buyer agreement dated 10.12.2018 was signed and accepted by the complainant. Therefore, the complainant can't go back with the agreement entered between the parties.

- ii. That the complainant has not approached the Authority with clean hands and suppressed true and material facts. The complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely instalments as per the agreement. 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.
- iii. 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.
- iv. 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
- v. 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 and got the funds transferred in the respondent account and got the receipt from the company, it does not mean that cancellation has been revived in any manner whatsoever.

- vi. That the complainant has consistently delayed making payments in accordance with the clearly outlined payment plan attached to both the application and the builder-buyer agreement. Despite numerous attempts by the respondent company, including telephonic calls, emails, and registered mail, the complainant has not responded positively to the requests for timely payments. The complainant has failed to pay the required instalments on time despite several attempts through telephonic call, emails, and various letters, therefore, the unit of the complainant is cancelled in above noted circumstances as per norms and conditions laid down in Affordable Group Housing Policy 2013 and agreement to sale.
- vii. That the complainant has not paid the outstanding instalments with interest for that very reason. The respondent 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.
- viii. That the complainant has been engaged in defamatory conduct on various platforms and public places. These actions are not only detrimental to the reputation of the respondent company but also constitute a clear violation of ethical standards. The complainant's defamatory activities, which are well-documented, have caused irreparable harm to the respondent's business, its promoters, and its ongoing and future projects.
- ix. That 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. The complainant must produce his 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

- x. That the agreement was signed by the complainant after going through the same. The complainant was satisfied and after agreeing all the terms and conditions, the complainant signed said agreement. The agreement is as per law and never deviated housing policy as alleged. The agreement is not one-sided agreement and it was fully accepted said agreement and after signature the complainant never raised any issue with regard the agreement. So now the complainant cannot go back the terms and conditions of the agreement and he is bound to make the payment as per the agreement
- xi. 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. As per the clause mentioned above in the complaint, the final EC is CTE/CTO which has been received by the respondent on February 2018. Hence the start date of project is February, 2018 and rest details are as follows:

<b>Covid and NGT Restrictions</b>	
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 2025 (25 months)	March-25
<b>Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts</b>	March-27

- xii. As per table given above, the final date for the completion of construction is March, 2027 in case the accounts are unfreeze by the competent authority.



From the February, 2023, the license has been suspended and accounts has been freezed by the DTCP Chandigarh and HRERA Gurugram. Clause no 5.5 in the said agreement to sale that is force majeure wherein both the parties have signed this clause and all the delays are very well explained in this para so the project is not delayed by a single day.

- xiii. That the complainant is bound to make the charges of GST and all other applicable charge as these charges are government charges and the respondent has no authority to waive off, exempt or to give any benefit to the complainant. These charges are transferred to Govt. and the respondent never keep the same with them. Therefore, the allegation of under corresponding paragraphs are denied entirely. Therefore, the complainant is not entitled to get any GST Input credits or any other relief as prayed by him.
  - xiv. That no hidden charges had been demanded by the respondent as alleged. All the charges were as per the agreement and amenity asked by the complainant. The complainant was agreed then any such charge was levied. The respondent never violated any terms of the agreement or housing policy. The complainant wants to extort the money by alleging false allegation against the respondent
  - xv. That the complainant is bound to make the payment of maintenance charges as agreed. The complainant has defaulted in making the payment of instalment and other charges as agreed. The complainant is taking false plea to avoid the payment of charges as per agreement.
  - xvi. That as the complainant has not paid the outstanding instalments with interest for that very reason the respondent 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. Therefore, the unit cannot be allotted to the complainant as his unit has already been cancelled.
7. All other averments made in the complaint were denied in toto.

8. 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**

9. 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**

10. 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**

11. 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.*

12. 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.**

13. 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 more than 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. 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.**

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 provide a valid Physical Possession after receipt of Occupancy Certificate.**

**G.II Direct the respondent to give delayed possession charges @ MCLR+2% from due date of possession till the date of actual physical possession at the prescribed rate of interest.**

17. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

18. The complainants intends to continue with the project and are 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."***

19. 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."***

20. 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 favor 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.

21. 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."*

22. **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.

**23. 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.*

24. 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.

25. 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., 19.08.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

26. 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;"*

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

28. 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

29. 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.

**G.III Direct the respondent to execute the Conveyance Deed after offering valid offer of possession to the complainant.**

30. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainants. Also, as per Section 19(11) of the Act of 2016, the allottee are also obligated to participate towards registration of the conveyance deed of the unit in question.
31. It is pertinent to note that the subject unit was jointly allotted in favor of Ankit Kumar Singh and Kiran Singh. As per the facts submitted by the complainant, the co-allottee, Kiran Singh, expired on 27.04.2021, and a death certificate has been placed on record. Accordingly, vide proceedings dated 29.07.2025, the complainant was directed to file the LRs' certificate of the deceased. During the proceedings dated 19.08.2025, the complainant submitted the said LRs' certificate.
32. Accordingly, in compliance with the obligations prescribed under Section 17(1) of the Act the respondent is hereby directed to execute and register the conveyance deed in favor of the complainant and legal heirs of the deceased allottee, on submission of requisite documents as per applicable local laws, within three months after obtaining occupation certificate from the competent authority.

**G.IV Direct the respondent to give anti-profiteering credit/tax credit to the Complainant.**

33. 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."*

34. 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.V Restrain the respondent from demanding Labour Cess, VAT, Work Contract Tax and Power Backup charges**

35. 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 10.12.2018, 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.VI Direct the respondent to give bifurcation of the total sale price including the clarification of cost of parking under the Affordable Housing Policy, 2013.**

36. 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.*

37. 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

#### **G.VII Restrain the respondent from demanding car parking charges from the Complainant**

38. Since, the said project is the affordable housing project and as per the latest amendment dated 04.01.2021 in the said Policy 2013, which it is reproduce as under: -

4. The clause no. 4(iii) of the Affordable Housing Policy dated 19<sup>th</sup> August, 2013 related to parking norms shall be substituted with the following:-  
**"4(iii) Parking Norms:**
  - a. Mandatory non-chargeable 0.5 ECS parking space
    - i. Mandatory parking space at the rate of half Equivalent Car Space (ECS) for each dwelling unit shall be provided.

- ii. Only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat-owners. The parking bay of two-wheelers shall be 0.8m x 2.5m unless otherwise specified in the zoning plan.
- iii. The balance available parking space, if any, beyond the allocated two-wheeler parking sites, can be earmarked as free-visitor-car-parking space.
- b. Optional and chargeable parking space at the rate of 0.5 ECS per dwelling unit.
  - i. The colonizer may provide an additional and optional parking space, maximum to the extent of half Equivalent Car Space (ECS) per dwelling unit
  - ii. In case such optional parking space is provided by the coloniser; maximum of one car parking space per dwelling unit can be allotted by the coloniser, at a rate not exceeding 5% of the cost of flat to such allottee.
- c. Miscellaneous
  - i. In cases where licenses under AHP 2013 already stand granted and building plans stand approved without availing the optional 0.5 ECS per dwelling unit parking space, the coloniser shall be required to submit the consent of at least two thirds of the allottees as per the provisions of Section 14 of Real Estate (Regulation and Development) Act, 2016, for the purpose of amendment in building plans for availing such additional and optional 0.5 ECS per dwelling unit parking space. Further, this benefit shall not be available for the projects wherein occupation certificate of all the residential towers has already been obtained.
  - ii. Additional parking norms and parameters, if any, can be specified in the zoning plan."

39. In view of the above provisions, the respondent/promoter is bound to comply the terms and condition of the Affordable Group Housing Policy, 2013 accordingly, no direction w.r.t. the same can be deliberated by the Authority at this stage

**G.VIII Restrain the respondent from charging any maintenance charges in future as the Complainant is not bound to pay the same under the Affordable Housing Policy, 2013**

40. As per the clarification regarding maintenance charges to be levied on affordable group housing projects being given by DTCP, Haryana vide clarification no. PF-27A/2024/3676 dated 31.01.2024, it is very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottees as per consumptions.

41. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

**G.IX To take action for violation of Section 6, i.e., non-extension of registration of the Act.**

42. The Authority observes that due to several continuing violations of the provisions of the Act, 2016 by the respondent, the Authority has already taken Suo motu cognizance of the project vide complaint bearing no. **RERA-GRG-1087-2023** and froze the bank account of the respondent related to the project vide order dated 24.02.2023. Therefore, the authority is proceeding to decide only the main relief sought by the complainant in the present complaint i.e., delay possession charges, possession and execution of conveyance deed on the basis of documents available on record as well as submission made by the parties.

**H.Directions of the Authority.**

43. 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 10.85% 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 10<sup>th</sup> 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 and legal heirs of the deceased allottee (Kiran Singh) 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., 10.85% 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 complainants 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 can charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in category-II of the office order dated 31.01.2024.

ix. 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.

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

45. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 19.08.2025**

**HARERA**  
**GURUGRAM**