

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

Complaint no. : 5663 of 2024  
Date of complaint : 14.11.2024  
Date of order : 20.08.2025

Sandeep Kaur, D/o Tajinder Singh  
R/o: - A-4, Tagore Garden Extn,  
Near Vishal Market, New Delhi-110027.

**Complainant**

Versus

Ocean Seven Buildtech Private Limited.  
**Regd. Office at:** 505-506, 5<sup>th</sup> Floor, Tower B-4,  
Spaze I-Tech Park, Sohna Road, Gurugram-122018.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Complainant in person  
Arun Yadav (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S.no.	Particulars	Details
1.	Project name and location	"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 other details	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others
5.	Building plan approval dated	07.02.2020 (As per DTCP website)
6.	Environment clearance dated	Not yet obtained
7.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 Valid up to- 02.09.2024
8.	Allotment letter	09.03.2021 [Page 18 of complaint]
9.	Builder buyer agreement	Not executed
10.	Flat no.	1003, tower 5 [Page 18 of complaint]
11.	Unit admeasuring	571.105 sq. ft. (carpet area) (Page 18 of the complaint)



12.	Possession clause as per Affordable Housing Policy, 2013	<b><i>1(IV) of the Affordable Housing Policy, 2013</i></b> <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>
13.	Due date of possession	Cannot be ascertained
14.	Total sale price of the flat	Rs.23,33,420/- (as per CRA at page 13 of complaint)
15.	Amount paid by the complainant	Rs.8,83,785/- [As per page 15 of complaint]
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant had signed and submitted an application dated 31.12.2020 for allotment of residential flat under Affordable Housing Policy, 2013 issued by Govt. of Haryana and through draw a flat bearing

- no. 1003 in Tower 05 admeasuring 571.105 sq.ft. carpet area and approx.98 sq.ft. balcony area was allotted to her vide allotment letter dated 09.03.2021 in the project of the respondent named "The Venetian" at Sector 70, Gurugram.
- II. That the respondent obtained building plan approval on 05.09.2019 and but did not receive environmental clearance yet and the respondent had neglected to complete the project till date.
  - III. That the respondent cannot override clause 1(iv) of Affordable Housing Policy, 2013 relating to completion of construction and possession.
  - IV. That the complainant had already paid sum of Rs.8,83,785/- up to 09.09.2021 in all. That the construction at the project site has not been started and the environmental clearance of the project has still not been obtained by the respondent.
  - V. That the respondent negligently did not execute any agreement to sell till date to avoid the obligation of completion of project within the stipulated period and to extend completion date at his whims and fancies even after receiving around half amount of sale price of the flat which is in violation of Section 13(1) of RERA Act, 2016.
  - VI. That the complainant 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.
  - VII. That for the reason stated above, the complainant is left with no other efficacious remedy available except to file the present complaint before the Authority.



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

4. Vide proceedings dated 23.07.2025, the complainant requested that she wishes to amend her relief from DPC to refund and has requested for a short adjournment to file application in this regard. The said request of the complainant was allowed. Thereafter, on 20.08.2025, the complainant has filed an application for amending her relief from delay possession charges to refund to which the counsel for the respondent has no objection. Accordingly, the said application of the complainant for amendment of relief was allowed by the Authority vide proceedings dated 20.08.2025.
5. The complainant has sought following relief(s):
  - I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
6. 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**

7. The respondent has contested the complaint on the following grounds:
  - i. That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.
  - ii. That the licence of the respondent was suspended and bank accounts of the respondent was freezed. Therefore, the respondent was not able to construct the project.
  - iii. That starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively.

This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent. The suspension of the license and freezing of accounts, starting from Feb 2023 till date, have created a zero-time scenario for the respondent.

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.

**F. Findings on objections raised by the respondent**

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

13. 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 firstly in the instant case, the buyer's agreement has not been executed between the parties. Secondly, 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.

14. 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.



**F.II Objections regarding force majeure.**

15. The respondent has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as suspension of license by the DTCP, Chandigarh and freezing of accounts by HRERA Gurugram etc. which is beyond the control of the respondent. 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. The Authority observes that 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.* However, the respondent has failed to obtain environment clearance from the competent authority and the project has not been commenced till date. Further, 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 and thereafter due to several continuing violations of the provisions of the Act, 2016 by the respondent, in view 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. Thus, the respondent/promoter cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant.**

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

16. The complainant was allotted a unit bearing no. 1003 in Tower 05 having carpet area of 571.105 sq.ft. and 98 sq. ft. balcony area in the project of respondent named "Venetian" at Sector 70, Gurugram under the Affordable Housing Policy, 2013 vide allotment letter dated 09.03.2021. However, no builder buyer agreement has been executed between the parties with respect of the subject unit. 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 along with interest at prescribed rate.
17. 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."*

18. 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 R 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.*

19. 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.
20. 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.
21. 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., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) 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 Rules, 2017 ibid.

**H. Directions of the authority**

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to refund the entire paid-up amount i.e. Rs.8,83,785/- 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., @10.85% 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.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of complainant- allottee.
23. The complaint stand disposed of.
24. Files be consigned to registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2025