

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

Date of Order: 20.08.2025

Name of the Promoter		Ocean Seven Buildtech Pvt. Ltd.	
Project Name		Expressway Towers	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/5702/2024	Aanchal Pandey V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
2.	CR/5707/2024	Izhar Ahmad Khan V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)
3.	CR/5785/2024	Mandip Sharma V/s Ocean Seven Buildtech Pvt. Ltd.	Harshit Batra (Complainant) Arun Yadav (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of 3 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, "Expressway Towers" at Sector 109, 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: "Expressway Towers" at Sector 109, Gurugram	
Possession clause in Affordable Housing Policy-	
1 (iv) <i>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.</i>	
1. Date of sanction of building plans-	Date of sanction of building plans is 26.09.2016.
2. Date of grant of environmental clearance-	Date of grant of environmental clearance is 30.11.2017.
3. Due date of handing over of possession-	30.05.2022 (The due date has been calculated as 4 years from date of grant of environmental clearance i.e., 30.11.2017 as per policy of 2013 + 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).
4. Occupation certificate-	Not obtained
5. DTCP License no. 6 of 2016 dated 16.06.2016-	Shree Bhagwan is the licensee for the project as mentioned in land schedule of the project.
6. RERA registration	- 301 of 2017 dated 13.10.2017 valid upto 12.10.2021.

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/5702/2024 Aanchal Pandey V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 22.11.2024	Reply received on 02.07.2025	507, 5 th Floor, Tower-7 (Page 33 of complaint)	22.01.2017 (page 28 of complaint)	30.05.2022 Offer of possession- Not offered	TSC: Rs.12,62,500/- (As per BBA on page 33 of complaint) AP: Rs.13,16,156/- (As per ledger account on page 71 of complaint)	DPC and Possession
2.	CR/5707/2024 Izhar Ahmad Khan V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 22.11.2024	Reply received on 02.07.2025	008, Tower-7 (Page 25 of complaint))	Not executed	30.05.2022 Offer of possession- Not offered	TSC: Rs.13,30,500/- (As per CRA at page 21 of complaint) AP: Rs.13,87,048/- (As per CRA at page 21 of complaint)	DPC and Possession, CD
3.	CR/5785/2024 Mandip Sharma V/s Ocean Seven Buildtech Pvt. Ltd. DOF- 22.11.2024	Reply received on 02.07.2025	1607, Tower-6 (Page 24 of complaint)	Not executed	30.05.2022 Offer of possession- Not offered	TSC: Rs.26,29,500/- (As per page 24 of complaint)) AP: Rs.26,55,798/- (As per CRA at page 20 of complaint)	DPC and Possession, CD

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 builder buyer's 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/5702/2024 titled as Aanchal Pandey 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/5702/2024 titled as Aanchal Pandey V/s Ocean Seven Buildtech Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Expressway Towers", Sector 109, Gurugram
2.	Nature of the project	Affordable Housing
3.	DTCP license no. and validity status	6 of 2016 dated 16.06.2016
4.	RERA Registered/ not registered	301 of 2017 dated 13.10.2017 valid upto 12.10.2021
5.	Allotment Letter	01.04.2017 (page 25 of complaint)
6.	Unit no.	507, 5 th Floor, Tower-7 (Page 33 of complaint)
7.	Unit area admeasuring	307 sq. ft. (carpet area), 69 sq.ft balcony area

		(Page 33 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	22.01.2017 (page 28 of complaint)
9.	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.
10.	Date of environmental clearance	30.11.2017 (as per project details)
11.	Date of approval of building plans	26.09.2016 (As per project details)
12.	Due date of possession	30.05.2022 (Calculated as 4 years from the date of grant of environmental clearance i.e., 30.11.2017 as per policy of 2013 + 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)
13.	Total sale consideration	Rs.12,62,500/- (As per BBA on page 33 of complaint)
15.	Amount paid by the complainant	Rs.13,16,156/- (As per ledger account on page 71 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions: -
 - I. That the complainant was allotted an apartment bearing no. 507, Tower 7 having 307 sq. ft. carpet area and 69 sq. ft. balcony area in project of

respondent named "Expressway Towers" at Sector 109, Gurugram, under the Affordable Housing Policy, 2013 vide allotment letter dated 01.04.2017. Thereafter, a builder buyer agreement dated 22.01.2017 was executed between the parties for a total sale consideration of Rs.12,62,500/- against which the complainant has paid a sum of Rs.13,16,156/- till date.

- II. That under the Sec 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.
- III. That till date, the possession has not been offered and the project is far from being completed. It is a matter of record that no occupancy certificate has been applied till date and the essential services are incomplete in the project.
- IV. 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.
- V. That under proviso of Section 18(1) of the Act, the respondent is bound to make the payment of interest on the amount deposited by the complainant till the actual handover of possession.
- VI. That the GST was implemented on 01.07.2017. The respondent has been charging GST @8% from the complainant, as is also evident from the demand letters issued to the complainant, however, no input tax credit has been given to the complainant.
- VII. That the builder has been selling the car parking at the exorbitant rates and encroaching upon common areas of the project. Further, the builder is

bound to maintain the project for a span of 5 years from the date of occupancy certificate and it cannot charge anything under the head of maintenance charges. Further, the respondent be restrained from demanding labour cess, VAT, work contract tax and power back up charges from the complainant.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondent to handover possession of the unit, to execute conveyance deed and to pay delay possession charges as per the Act.
 - ii. To restrain the respondent from demanding labour cess, VAT, work contract tax, car parking charges, maintenance and power backup charges.
 - iii. Direct the respondent to give input tax credit of GST to the complainant.
10. Apart from the above relief, the complainant has sought some other reliefs such as appointment of L.C, conduct forensic audit of the books of accounts of the respondent, initiation of penal proceedings for violation of Section 4(2)(l)(c), Section 6 of the Act, 2016 etc. The Authority observes that due to several continuing violations of the provisions of the Act, 2016 by the respondent, the Authority has already freezed the bank account of the respondent related to the project vide order dated 24.02.2023 and has also taken Suo motu cognizance of the project vide complaint bearing no. RERA-GRG-1087-2023. 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 etc. on the basis of documents available on record as well as submission made by the parties.
11. 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:

12. The respondent vide its reply dated 02.07.2025 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 complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments.
- 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. Further, there is no delay on the part of the respondent project as it is covered under clause number 5.5 force Majeure, which is beyond control of the respondent.
- iv. That the final EC is CTE/CTO which has been received by the respondent in February 2018. Hence the start date of project is Feb 2018 and rest details are as follows:

Covid and NGT Restrictions		
Project completion Date	Feb-22	
Covid lock down waiver	18 months	
NGT stay (3 months approx. for every year) i.e. 6*3	18 months	
Total Time extended to be extended (18+18) months	36 months	
Accounts freezed & license suspended further time to be extended till the unfreezing of the accounts i.e. Feb- Nov 2023 (10 months)	Feb 2023 till date	
	Nov-23	

Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	Nov-25	
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As per the table given above, the final date for the completion of construction is Feb 25 in case the accounts are unfreezed by the competent authority on the date of filing this reply. From Feb 2023, the license has been suspended and accounts have been freezed by the DTCP Chandigarh and HRERA Gurugram.

13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

14. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

15. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

17. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force majeure.

18. 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. 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 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 promoter/respondent 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.

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

19. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that Section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88

of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

20. Further, in ***Aftab Singh and ors. 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.1 Direct the respondents to handover possession, to execute conveyance deed and to pay delay possession charges as per the Act.

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

"Section 18: - Return of amount and compensation

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

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

22. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licenced 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."

23. **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.

24. **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.

25. 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.
26. 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., 20.08.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

27. 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;"*

28. 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 delay possession charges.
29. 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 apartment 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. The respondent vide its reply dated 02.07.2025 has contended that the complainant has not paid the outstanding installments with interest. For that reason, the respondent has cancelled her unit and allotted to some other buyer. However, as per record, the complainant is not at default and has paid a considerable amount of money towards the sale consideration of the unit. Further, there is no document available on record to substantiate the claim of the respondent. Accordingly, the claim of the respondent is rejected being devoid of merits. 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.

30. 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.
31. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the allottee. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant 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.

G.II To restrain the respondent from demanding Labour Cess, VAT, Work Contract Tax, Maintenance and Power Backup charges.

32. 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 the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges:

- **Labour Cess:** - The issue of labour cess 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 is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent-builder who is solely responsible for disbursement of the 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.

- **Maintenance and Power Backup Charges:** - The issue of maintenance and 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-allottee as per consumption as prescribed in category-II of the office order dated 31.01.2024.

- **Car Parking Charges:** - Since, the said project is the affordable housing project and as per the latest amendment dated 04.01.2021 in the said Policy 2013, it is observed that: -

4. *The clause no. 4(iii) of the Affordable Housing Policy dated 19th 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."*

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.III Direct the respondent to give input tax credit of GST by allowing refund with interest in terms of order dated 05.11.2019 passed by Hon'ble National Anti-Profiteering Authority.

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.

35. The complainant in complaints bearing no.s **CR/5707/2023** and **CR/5785/2024** is additionally seeking relief with respect to execution of buyer's agreement. The Authority observes that as per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondent is directed to enter into a registered buyer's agreement with the complainant(s) as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

H. Directions of the authority

36. 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 pay interest to the complainant 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 promoter to the allottee 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 before 10th of the subsequent month as per Rule 16(2) of the Rules.

- iii. The respondent is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainant.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.
- v. The respondent shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant 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.
- vi. The rate of interest chargeable from the allottee 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, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent/promoter shall not charge labour cess as well as work contract tax from the complainant-allottee.
- viii. The respondent can charge VAT from the complainant where the same was leviable, at the applicable rate, if they have not opted for composition scheme. Further, the promoter shall charge actual VAT from the complainant paid by it to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. The complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

- ix. The respondent 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.
 - x. The respondent 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.
 - xi. The respondent in complaint bearing no.s CR/5707/2023 and CR/5785/2024 is additionally directed to enter into a registered buyer's agreement with the complainant(s) as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of.
39. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2025