

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

Date of Order: 15.07.2025

NAME OF THE BUILDER		Ocean Seven Buildtech Private Limited	
PROJECT NAME		THE VENETIAN	
S. No.	Case No.	Case title	APPEARANCE
1	CR/5525/2024	Jagmohan Sharma V/s Ocean Seven Buildtech Private Limited	Mrs. Priyanka Aggarwal (Advocate for complainants)
2	CR/5526/2024	Aman Kumar V/s Ocean Seven Buildtech Private Limited	Sh. Arun Yadav (Advocate for respondent)

CORAM:Shri Arun Kumar
Shri Ashok Sangwan**Chairman
Member****ORDER**

1. The present complaint has been filed by the complainant/allottees 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 to the allottee as per the agreement for sale executed inter-se them.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely,

"The Venetian, Sector 70 Gurugram" being developed by the same respondent/promoter i.e., Ocean Seven Buildtech Private Limited.

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

Project Name and Location	"The Venetian" at sector-70, Gurgaon, Haryana	
Occupation certificate: - Not obtained		
Complaint No.	CR/5525/2024	CR/5526/2024
	Date Of filling.: 02.12.2024 Reply: 03.07.2025	Date Of filling.: 02.12.2024 Reply: 03.07.2025
Unit no. and	902, Tower-3 (type-1) (page 70 of complaint)	907, Tower-5 (type-1) (page 71 of complaint)
Area admeasuring	571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (page 70 of the complaint)	571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (page 71 of the complaint)
Allotment letter	09.03.2021 (As per page no.42 of the complaint)	09.03.2021 (As per page no.71 of the complaint)
Date of builder buyer agreement	Not executed	Not executed
Possession clause (as per affordable housing policy, 2013)	1(IV) of the Affordable Housing Policy, 2013 <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>	
Building Plan	07.02.2020 (As per DTCP official website)	07.02.2020 (As per DTCP official website)
Environment Clearance	Not Obtained	
Due date of delivery of possession	Cannot be ascertained in absence of environment clearance	
Sale Consideration (SC)	Rs.23,33,420/- (as alleged by complaint)	Rs.23,33,420/- (as alleged by complaint)

Total Amount paid by the complainant(s) (AP)	Rs.5,89,189/- (as alleged by complaint) Rs.1,16,671/- (as per demand letter page 70 of complaint)	Rs.8,83,785/- (as per demand letter dated 23.02.2022 page 75 of complaint)
Offer of possession	Not offered	Not offered
Relief sought by the complainant(s) in abovementioned complaints:-		
I. Direct the respondents to refund the entire paid amount along with interest at the rate prescribed by the Act from the date of each payment till the actual realisation. II. Direct the respondent not to raise any illegal demands in respect to the unit in question. III. Direct the respondent not to create third-party interest in the unit in question. IV. To issue the show cause notice for violation of terms of RERA registration certificate and Act. V. To immediately start the enquiry against builder for violation of terms of RERA registration certificate and Act. VI. To stop the future sale of project till the receiving of outcome of enquiry or future thereon. VII. To revoke the registration certificate of the Respondents for sheer violations of the provisions of the RERA Act, 2016. VIII. To form high end committee which will produce the report about violation of provisions of the Act and Registration certificate. IX. Impose heavy penalty for violation of terms of registration certificate and the Act		

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit seeking refund of the paid-up amount along with interest.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- 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/5525/2024 Jagmohan Sharma V/s Ocean Seven Buildtech Private**

Limited are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

7. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 and location of the project	"The Venetian" at sector-70, Gurgaon, Haryana
2.	Nature of the project	Affordable group housing
3.	Project area	5.10 acres
4.	DTCP license no.	103 of 2019 dated 05.09.2019 Valid up to 04.09.2024
5.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 valid up to 02.09.2024
6.	Unit no.	902, Tower-3 (type-1) (page 70 of complaint)
7.	Unit area admeasuring	571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) page 70 of the complaint)
8.	Date of allotment	09.03.2021 (As per page no.42 of the complaint)
9.	Date of apartment buyer's agreement	Not executed
10.	Date of approval of building plan	07.02.2020 (As per DTCP official website)
11.	Date of environmental clearance	Not obtained
12.	Possession clause as per buyer's agreement	NA
13.	Possession Clause (as per affordable housing policy, 2013)	1(IV) of the Affordable Housing Policy, 2013 <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance,</i>

		<i>whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
14.	Due date of possession	Cannot be ascertained
15.	Total sale consideration	Rs.23,33,420/- (alleged by complaint)
16.	Amount paid by the complainant	Rs.5,89,189/- (alleged by complaint) Rs.1,16,671/- (as per demand letter page 70 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint.

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

- That in 2020, the respondent issued an advertisement announcing an Affordable Group Housing, in view of such advertisement, complainant applied for the residential unit in the project "The Venetian" situated at Sector 70, Gurugram, Haryana, in a land parcel admeasuring a total area of approximately 5.10 acres of land, under the Registration no. 39 of 2020 dated 27.10.2020, issued by RERA, Haryana.
- That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a flat in the aforesaid project by paying a booking amount of Rs.1,16,671/-
- That the respondent sent an allotment letter, on 09.03.2021 to complainant confirming the booking of the residential apartment flat no. 902, Tower no. 3, 2BHK, Type-1 admeasuring carpet area 571.105 sq. ft. and balcony 98 sq. ft. and further, raised second demand of Rs.4,72,518/-.
- That as per the Haryana Affordable Housing Policy 2013, the basic sale price of the unit was Rs.4000/- per sq. ft. for carpet area and Rs.500/- per sq. ft. for

balcony area, which comes out to be Rs.22,84,420 + 49,000, i.e., Rs.23,33,420/-. The complainant paid the said amount as demanded by the respondent.

- e. That the complainants kept on requesting the respondent to execute agreement to sell for their allotted unit, however, the respondent company kept on using dilly-dallying tactics.
- f. Further the complainant had paid Rs.5,89,189/- till date to the respondent which is more than 10% of the basic sale consideration of Rs.23,33,420/-
- g. That the complainant on various occasions made an effort to initiate communication with the respondent for refund but all the efforts went in vain.
- h. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
- i. That complainants requested the respondent to show/inspect the unit before complainants pay any further amount and requesting to provide the car parking space no but respondent failed to reply.
- j. That complainant sent various emails to the respondent raising various issues in relation to the said unit and asking the reason for delay in completing the construction of the project and time line within which possession will be handed-over to the complainants and challenging the various illegal and one-sided demands letters sent to the complainant but respondent till date has failed to provide any satisfactory response to the complainant.
- k. The respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is

unable to handover a possession even after a delay of many years. By falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession, the complainant has been subjected to unethical/unfair trade practice as well as subjected to harassment in the guise of a biased BBA. The above said acts of the respondent clearly reveal that the "opposite parties" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such act and omissions on the part of the opposite party has caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the "opposite party". The respondent is liable to make as being requisitioned/claimed by the complainant.

- l. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- m. The above said acts of the respondent clearly reveal that the "respondent" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services.

All such act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainant.

- n. The respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- o. The respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of Act, 2016 and Rules, 2017.
- p. That the respondent has played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period and paying the monthly assured amount. The respondent had further malafidely failed to implement the agreement executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- q. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the agreement.
- r. That the complainant continuously asking the respondent company about the status of the project, time by which the project is expected to be completed,

and the penalty amount that respondent is liable to pay but respondent was never able to give any satisfactory response to the complainant.

- s. That the respondent is guilty of deficiency in service within the purview of provisions of the real estate Act, 2016 (central act 16 of 2016) and the provisions of Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 (central act 16 of 2016) and the provisions of Rules, 2017.
- t. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- u. That the complainant is entitled to get refund of the entire amount paid along with interest at the prescribed rate from date of payment to till the realization of money under section 18 & 19(4) of Act.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):

- i. Direct the respondents to refund the entire paid amount along with interest at the rate prescribed by the Act from the date of each payment till the actual realisation.
- ii. Direct the respondent not to raise any illegal demands in respect to the unit in question.
- iii. Direct the respondent not to create third-party interest in the unit in question.

- iv. To issue the show cause notice for violation of terms of RERA registration certificate and Act.
 - v. To immediately start the enquiry against builder for violation of terms of RERA registration certificate and Act.
 - vi. To stop the future sale of project till the receiving of outcome of enquiry or future thereon.
 - vii. To revoke the registration certificate of the Respondents for sheer violations of the provisions of the RERA Act, 2016.
 - viii. To form high end committee which will produce the report about violation of provisions of the Act and Registration certificate.
 - ix. Impose heavy penalty for violation of terms of registration certificate and the Act.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

11. The respondent is contesting the complaint on the following grounds:
- a. That the complaint filed by the complainant is grossly misconceived, wrong, unjustified and untenable in law besides being clearly extraneous and irrelevant and is liable to be dismissed.
 - b. That the complainant has no locus standi to file the present complaint. it is submitted that complainant is estopped from filling the present complaint by his own act, conduct, omissions, admissions, acquiescence and laches.
 - c. 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 was signed and accepted by the complainant. Therefore, the complainant can't go back with the agreement entered between the parties.

- d. That the complainant has not approached to the Authority with clean hands and suppressed true and material facts. The complainant has intentionally not disclosed the correct facts before this court.
- e. That 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.
- f. The complainant has been 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.
- g. The respondent contends that the complainant's motives are marred by malafide intentions. The present complaint, founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. The complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint. This action is not only illegal and unlawful but also goes against the principles of natural justice.
- h. There is every apprehension that the complainant in collusion with any staff member of the respondent company including ex-employee or those who held positions during that time may put forth the altered and fabricated document which is contradictory to the Affordable Housing Policy should not be considered binding on the company in any manner whatsoever.
- i. That in case cancellation notice by the respondent has been issued to the complainant and given time has been expired and thereafter the complainant by manipulation and in collusion with the bank or any staff of respondent company and got the funds transferred in the respondent company account

and got the receipt from the company, it does not mean that cancellation has been revived in any manner whatsoever.

- j. 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.
- k. The respondent firmly believes that the complainant's actions are driven by mala fide intentions. 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.
- l. That the license of the respondent has been suspended and DTCP has also freeze the bank accounts of the respondent, therefore the respondent was not able to construct the project in time manner. Starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively. This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent, rendering the completion of construction by the stipulated date of February 25, 2023, practically impossible.
- m. That zero time for the respondent: the suspension of the license and freezing of accounts, starting from February, 2023 till date, have created a zero-time scenario for the respondent. Without access to funds, the respondent is unable to continue construction activities, a circumstance compounded by

the requirement of funds to be deposited in the RERA account as mandated by the RERA Act. Unfortunately, the RERA Gurugram has frozen the said account, leaving the respondent without the financial means necessary to fulfill its contractual obligations.

- n. That the complainant has failed to make timely payments as agreed, and his actions have been defamatory in nature, causing significant harm to respondent, its promoters, and ongoing/future projects. consequently, the respondent has filed a counter-claim against the complainant, seeking redress for the losses incurred.
- o. That the complainant has falsely alleged that the price of flat was Rs.23,33,420/-. It was not final price and nothing was included in this price i.e. taxes, various charges levied by the different bodies, authority and govt. therefore, the final price was more than the alleged price.
- p. That the complainant was neglect and defaulter in making time bound payment, hence for non-making the payment the respondent sent the demand notices to the complainant. Despite the demand notices the complainant has not made the payment as per the agreement till the date and he is a defaulter. Payment made to the respondent is denied for want of knowledge. The respondent was always willing to execute the agreement but it was the complainant who did not bother to come for execution of the agreement. Any payment made by the complainant is denied for want of knowledge.
- q. That the complainant is not entitled to get any refund because he was negligent in making the payment and never fulfilled the terms and conditions of the agreement. the respondent was always willing their part of agreement but due to complainant act the respondent could not proceed further. The complainant never contacted to the respondent or its staff.

- r. That the complainant was defaulter in making the payment in time bound manner as agreed, therefore the respondent was not able to construct the project. The payment at the end of the complainant is still due as per the schedule of agreement. The complainant has not sent any mail as alleged. The complainant has not filed any mail as alleged. The complainant wants to extort the money from the respondent by filing present false and frivolous complaint.
- s. That the respondents never adopted unfair trade practice and was always willing to fulfill their part of agreement. However, the complainant himself who was defaulter in non-making the time manner payment and when he failed to do so then he approached to this Authority for covering his default and extort the money from the respondent for his own wrong doing.
- t. That the complainant has not suffered any loss as alleged. The complainant has not made the entire payment as agreed therefore no question arises to handover the possession. Further the complainant is also not entitled to get the return as the respondent was always willing to perform their part of agreement but the complainant did not comply the same. The respondent always responded properly as and when the complainant contacted to the office of the respondent.

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

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

17. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
18. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of***

India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on objections raised by the respondent.

F.1 Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

20. 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. Sccondly, 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.

21. 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 relief sought by the complainant.

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

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

22. The complainant was allotted a unit bearing no. 902, Tower-3 (type-1) admeasuring carpet area of 571.105 sq. ft. along with balcony with area of 98 sq. ft. in the project of respondent named "The Venetian", 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) whichever is later. Therefore, the due date of possession cannot be ascertained as environment clearance has not been obtained by the respondent from the competent authority. As per record, the complainant has paid an amount of Rs.1,16,671/- 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.

23. 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."

24. Also, the respondent has raised an objection that complainant-allottee is a wilful defaulter and has failed to make payment of the instalments and has thus violated provisions of Section 19(6) & (7) of the Act. In this regard, the Authority observes that as per clause 5(iii)(b) of the Affordable Housing Policy, 2013, the licence will start receiving the further instalments only once the environmental clearance is received. As delineated hereinabove, the respondent has failed to obtain environmental clearance till date, thus, it is not entitled to receive any further payments. Hence, the objection raised by the respondent is devoid of merits.
25. Further, as per amendment dated 09.07.2018 in Affordable Group Housing Policy, 2013, the rate of interest in case of default shall be as per rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. Rule 15 of the rules is reproduced as under:

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

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

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

26. 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.
27. 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.
28. 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., @11.10% 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 Haryana Rules 2017 *ibid.*

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

29. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants and even if any transfer is initiated with respect to subject unit the receivable shall be first utilized for clearing dues of allottee-complainant.

G.IV To issue the show cause notice for violation of terms of RERA registration certificate and Act.

- G.V To immediately start the enquiry against builder for violation of terms of RERA registration certificate and Act.**
- G.VI To stop the future sale of project till the receiving of outcome of enquiry or future thereon.**
- G.VII To revoke the registration certificate of the respondents for sheer violations of the provisions of the RERA Act, 2016.**
- G.VIII To form high end committee which will produce the report about violation of provisions of the Act and Registration certificate.**
- G.IX Impose heavy penalty for violation of terms of registration certificate and the Act.**


30. 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-1104-2023** and freezed 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. refund of the paid amount along with interest on the basis of documents available on record as well as submission made by the parties.

H.Directions of the Authority.

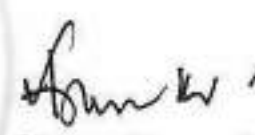
31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to refund the entire paid-up amount by the complainants 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., @11.10% 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.
32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, and details of paid-up amount is mentioned in each of the complaints.
33. Complaint as well as applications, if any, stand disposed off accordingly.
34. Files be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.07.2025
(Arun Kumar)
Chairman**HARERA**
GURUGRAM