

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

Date of Order: 29.07.2025

NAME OF THE BUILDER		M/s Ocean Seven Buildtech Pvt. Ltd.	
PROJECT NAME		"The Venetian" at sector-70, Gurgaon, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/5642/2024	Mahavir Singh Rathi V/s M/s Ocean Seven Buildtech Private Limited	Sh. Gulab Singh (Advocate for complainant) Sh. Arun Yadav (Advocate for respondent)
2.	CR/5644/2024	Devender Singh V/s M/s Ocean Seven Buildtech Private Limited	Sh. Gulab Singh (Advocate for complainant) Sh. Arun Yadav (Advocate for respondent)
3.	CR/5645/2024	Param Veer Singh V/s M/s Ocean Seven Buildtech Private Limited	Sh. Gulab Singh (Advocate for complainant) Sh. Arun Yadav (Advocate for respondent)
4.	CR/6011/2024	Goldi Kaushik V/s M/s Ocean Seven Buildtech Private Limited	Sh. Naresh Pandit (Advocate for complainant) Sh. Arun Yadav (Advocate for respondent)
5.	CR/5417/2024	Manish Pawar V/s Ocean Seven Buildtech Private Limited	Sh. Harshit Batra (Advocate for complainant) Sh. Arun Yadav (Advocate for respondent)

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

ORDER

1. This order shall dispose of 5 complaints titled above filed before the Authority 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 parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "The Venetian, 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
Project area	5.10 acres
Nature of the project	Affordable group housing
DTCP license no. and other details	103 of 2019 dated 05.09.2019 Valid up to 04.09.2024
Building plan approval	07.02.2020 (As per DTCP official website)
Environment clearance	Not obtained
RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 valid up to 02.09.2024
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</i>



	<i>shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
Due date of possession (as per Affordable Housing Policy, 2013)	Cannot be ascertained in absence of environment clearance
Occupation certificate	Not obtained

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter and BBA	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/5642/2024 Mahavir Singh Rathi V/s M/s Ocean Seven Buildtech Private Limited DOF: 21.11.2024 Reply: 22.05.2025	505, Tower-3 (type-2) 556.280 sq. ft. (Carpet area) 90 sq. ft. (balcony area) (Page 16 of complaint)	Allotment: - 09.03.2021 (Page 16 of complaint) BBA Not executed	TSC: NA AP: Rs.8,59,811/- (as per the demand letter page 18 and payment receipt on page 22 of complaint) <i>*Note: inadvertently vide proceedings dated 29.07.2025 amount paid was recorded as Rs. 12,95,049/-</i>
2.	CR/5644/2024 Devender Singh V/s M/s Ocean Seven Buildtech Private Limited DOF: 21.11.2024 Reply: 22.05.2025	1806, Tower-1 (type-1) 571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (Page 14 of complaint)	Allotment: - 09.03.2021 (Page 14 of complaint) BBA Not executed	TSC: NA AP: Rs.11,78,404/- (alleged by complaint) Rs.1,16,671/- (as per the allotment/demand page 14 of complaint) <i>*Note: inadvertently vide proceedings dated 29.07.2025 amount paid was recorded as Rs.1,60,661/-</i>
3.	CR/5645/2024 Param Veer Singh V/s	603, Tower-5 (type-1) 571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area)	Allotment: - 09.03.2021 (Page 14 of complaint) BBA Not executed	TSC: NA AP: Rs.8,83,785/- (as per receipts page 16-18 of complaint)

	M/s Ocean Seven Buildtech Private Limited	(Page 14 of complaint)		
	DOF: 21.11.2024			
	Reply: 22.05.2025			
4.	CR/6011/2024 Goldi Kaushik V/s M/s Ocean Seven Buildtech Private Limited DOF: 16.12.2024 Reply: 02.04.2025	1603, Tower-2 (type-1) 571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (Page 15 of complaint)	Allotment: - 09.03.2021 (Page 15 of complaint) BBA Not executed	TSC: NA AP: Rs.8,83,785/- (as per receipts at page 18- 20 of complaint)
5.	CR/5417/2024 Manish Pawar V/s M/s Ocean Seven Buildtech Private Limited DOF: 21.11.2024 Reply: 22.05.2025	1503, Tower-5 (type-1) 571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area) (Page 21 of complaint)	Allotment: - 09.03.2021 (Page 21 of complaint) BBA Not executed	TSC: Rs.23,33,420/- (alleged by complaint) AP: Rs.11,78,381/- (alleged by complaint) Rs.8,83,785/- (as per the demand letter at page 23 of complaint) <i>*Note: inadvertently vide proceedings dated 29.07.2025 amount paid was recorded as Rs.12,95,049/-</i>

Relief sought by the complainant(s) in abovementioned complaints: -

1. Direct the refund the paid-up amount along with interest.
2. Direct the respondent to not create any third party right against the subject unit before the full realization of paid-up amount along with interest.
3. Litigation Cost.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. 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
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 promoters, 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/5642/2024 Mahavir Singh Rathi V/s M/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:

CR/5642/2024 Mahavir Singh Rathi V/s M/s Ocean Seven Buildtech Private Limited

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.	505, Tower-3 (type-2) (page 16 of complaint)
7.	Unit area admeasuring	556.280 sq. ft. (Carpet area) & 90 sq. ft. (balcony area) (page 16 of the complaint)
8.	Date of allotment	09.03.2021 (As per page no.16 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, 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 in absence of environment clearance
15.	Total sale consideration	NA
16.	Amount paid by the complainant	Rs.8,59,811/- (as per the demand letter page 18 and payment receipt on page 22 of complaint) <i>*Note: inadvertently vide proceedings dated 29.07.2025 amount paid was recorded as Rs. 12,95,049/-</i>
17.	Surrender request by complainant	23.12.2021 (page 15 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint.

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

- a. That after visiting places in Gurugram in search of a good residential/unit, the complainant came into contact with the respondent's officials by the sales/marketing agent of the respondent, where it was informed to the complainant that the respondent's is s developing a project "THE VENETIAN" at Sector-70, Gurugram, Haryana and ongoing through the attractive Brochure, the payment plan and assurance given by the officials of the respondent regarding constructing of various project in Gurugram, and other districts of Haryana within the stipulated period it was intimated that project is in pre-launching stage and it would be huge benefits to my client as after launching of the project, the rates of the properties would soar to the great high' and by the reputation of the respondent's company, the complainant decided to have a residential unit in the respondent project.
- b. That complainant duly believed the statement of the representative of respondent and applied for the allotment of a flat no – 505, in Tower no 3, 2BHK(Type-2), having the super area of 556.280 sq. ft in the project approx. balcony area 90 sq. ft. approx. with total sale consideration is not available on record. The complainant duly paid the total consideration of Rs.8,59,811/- through the cheques.
- c. That the complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company which has also been admitted and acknowledged by the respondent officials. The stamp duty plus registration charges and administrative charges as mentioned in the payment plan is liable to be payable by the complainant and that too at the time of offer of possession.

- d. That apart from issuing a payment receipts on different dates the respondent company also issued an allotment letter dated 09.03.2021 carrying the details of unit allotted and also the details of amount to be deposit by the complainant's time to time as per payment plan opted by the complainants.
- e. That the complainant deposited the required amount as per the payment plan opted by the complainants according to the allotment letter. Due to illegal acts and conducts of the respondent, the complainants had been suffered to great mental agony, physical harassment, financial loss, humiliation, hence the complainants are entitled refund amount of rs.8,59,811/- deposited by the complainant with the respondent, as mentioned above along with interest as per rules.
- f. That as the respondent failed to discharge to complete and handover the possession of the allotted residential/unit to the complainant within the stipulated time and thus they have cheated the complainant to invest their hand earn money on believing upon their false assurances. The respondent in a master minded and scripted way succeeded to their ulterior motive and cause wrongful losses to the complainant and wrongful gains to themselves.
- g. Thus, the respondent has not only breached the trust of the complainant but also in a planned and thoughtful way cheated/defrauded the complainant. The respondent involved in the swindling and embezzlement of funds of not only of the complainant but similarly situated innocent people at large that due to illegal act and conducts of the respondent, the complainants had suffered to great mental agony, physical harassment, financial loss humiliation, hence the respondent is liable to refund Rs.8,59,811/- including of 24% interest p.m. is the interest of Justice.

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.

ii. Litigation Expense.

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 malafide 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 respondent was always willing to fulfil their part of performance. However, it was the complainant who did not comply his part of performance and escape from the agreement.

p. That due to illegal acts and conduct of the respondent, the complainant had been suffered to great mental agony, physical harassment, financial loss, humiliation. The respondent was always willing to construct the project. Due to non-making the payment of the instalments by the allottees including the complainant, the respondent was not able to construct the project. There is no delay at the end of the respondent but due to the default of the complainant and other allottees, the compliance of agreement was not possible. The time scheduled payment as per the agreement was prime condition for the possession but due to non-compliance by the complainant and other allottees it could not happen.

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.I 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 complaints dealt here in the present order 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.

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.

22. The complainant was allotted a unit bearing no. 505, Tower-3 (type-2) admeasuring carpet area of 556.280 sq. ft. along with balcony with area of 90

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.8,59,811/- 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. In CR/5642/2024 the complainant surrendered his unit and sought refund from the respondent citing delay in construction and his health problems on 23.12.2021. 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. It is evident that the respondent has not obtained the environment clearance till date. 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 willful 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 license 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., @10.90% 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.* (*Note: Vide proceedings dated 29.07.2025 interest rate was recorded as 11.10%)

G.II 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.III Litigation Expense.

30. The complainants are seeking relief w.r.t litigation expense. *Hon'ble Supreme Court of India* in case titled *as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

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., @10.90% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual realization of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

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

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025