

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

Complaint no. : 5490 of 2022
First date of hearing: 03.11.2022
Date of decision : 25.07.2025

Pawan Kumar,
R/o: - H. No. 031, Jaitrawas Ward no. 2,
Sulkha(2), Sulkha Rewari, Haryana-123401.

Complainant**Versus**

M/s Ocean Seven Buildtech Private Limited
Regd. Office at: B-4, 505-506, Spaze I Tech Park Sohna
Road, Sector-49, Gurugram- 122018.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Rajan Kumar Hans (Advocate)
Sh. Arun Yadav (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 25.08.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the

Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S.No | Particulars | Details |
|------|--------------------------------------|---|
| 1. | Name of the project | Expressway Tower, Sector- 109, Gurugram, Haryana |
| 2. | Project area | 7.5 acres |
| 3. | Nature of the project | Affordable group housing colony |
| 4. | DTCP license no. and validity status | 06 of 2016 dated 16.06.2016. Valid up to 15.06.2021 |
| 5. | RERA Registered/ not registered | Registered vide no. 301 of 2017 dated 13.10.2017. Valid up to 12.10.2021 |
| 6. | Allotment letter | 20.05.2017 [Page 14 of complaint] |
| 7. | Flat no. | 2204, 22 nd floor, tower 3 [Page 21 of complaint] |
| 8. | Unit admeasuring | 644 sq. ft. (carpet area) 100 sq. ft. (balcony area) [Page 21 of the complaint] |
| 9. | Builder buyer agreement | 16.02.2017 [Page 16 of complaint] |
| 10. | Possession clause | 1(IV) of the Affordable Housing Policy, 2013 |



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|-----|--------------------------------|---|
| | | <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> |
| 11. | Building plans approved on | 26.09.2016 |
| 12. | Environmental clearance | 30.11.2017 |
| 13. | Due date of possession | 30.05.2022 Note: The due date is calculated from the date of environment clearance being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 |
| 14. | Loan Sanction letter | 08.02.2018 [Page 54 of complaint] |
| 15. | Tripartite agreement | Undated [Page 60 of complaint] |
| 16. | Total sale price of the flat | Rs. 26,26,000/- [As per clause 4.1 of BBA, page 21 of complaint] |
| 17. | Amount paid by the complainant | Rs. 13,58,815/- [As per ledger dated 24.12.2019 at page 65 of complaint] |

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| 18. | Demand letters | 04.11.2019 (as per supplementary documents filed by respondent on page 05 A) 04.05.2020 (as per supplementary documents filed by respondent on page 05 A) |
| 19. | Cancellation letter | 23.07.2021 (as per supplementary documents filed by respondent on page 03) |
| 20. | Date of publication | 30.06.2020 (as per supplementary documents filed by respondent on page 06) |

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant Pawan Kumar is a Resident of H no. 31, Jaitrawas Ward No 2, Sulkha (2), Sulkha, Rewari, Haryana, 123401.
- II. That Complainant falls under the category of "Allottee" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Authority.
- III. That the respondent Ocean Seven Buildtech Pvt. Ltd, is a company incorporated under the companies act, 1956 having its registered office at: village Kherki Mukkar Paniyala Mor, tehsil - Kotputli Jaipur RJ 303108 IN and address for service of all notices: 505-506, 5th floor, Tower B-4 Spaze I-TECH PARK, Sohna Road, Gurgaon 122018 HR IN.
- IV. That the respondent / the builder, falls under the category of "promoter" and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Authority.

- V. That the project in question is known as "*Expressway Towers*", located in Sector 109, Gurugram, Haryana promoted by a reputed builder Ocean Seven Buildtech Pvt.Ltd.
- VI. That the unit in question is flat no- 2204, 22nd floor, tower 3, 2 BHK Type II having carpet area of 644 sq. ft and balcony area of 100 Sq. Ft.
- VII. That the complainant visited the site. The location was excellent and they consulted the local representative of the developer. The local representative of the developer allures the complainant with specification of the project.
- VIII. That the complainant applied in the draw via application No.3290 for the allotment of the said unit. The draw of lot was held on 19.05.2017, where he was allotted the unit/ flat no.- 2204, 22nd floor, tower 3 BHK Type II Having carpet area of 644 sq. ft and balcony area of 100 sq. ft. That on 20.05.2017 respondent issued the allotment letter for the same.
- IX. That the builder buyer agreement was executed on 11.09.2017 but the date mentioned by the respondent in builder buyer agreement was 16.02.2017 due to the clerical error by the respondent which is way before the allotment of unit took place. The total sale consideration being Rs.26,26,000/-
- X. That the complainant has also taken the home loan from Indiabulls Housing Finance Limited dated 18.02.2018 the sanction letter was issued by Indiabulls Housing Finance Limited with a loan amounting to Rs. 19,34,683/-.

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- XI. That the tripartite agreement dated 18.02.2018 was executed between complainant, respondent and Indiabulls Housing Finance Limited for an amount of Rs. 19,34,683/-.
- XII. That on call and demand of the respondent the complainant had already paid the amount of Rs.13,58,815/- which was acknowledged by the builder through the ledger dated 02.04.2017 to 24.12.2019.
- XIII. That the complainant stopped receiving demand letters from the respondent since 2019 as the complainant being a resident of a village Sulkha in district Rewari a rural area did not receive any demand letter, calls or emails and when called upon the email id with the respondent was wrong and even after repeated request there was no change in the email id. Further when complainant went to the office of the respondent, he came to know that his unit was canceled on the ground of non payment of dues. The last demand letter received was on 12.04.2018 and accordingly the last payment was made on 07.06.2018.
- XIV. That complainant himself is an advocate and knows well about the process and had already paid the amount of Rs.13,58,815/- against the total sale consideration of Rs.26,26,000/- that is 52% of the latter and also applied for the home loan. The complainant is financially sound to pay off the dues.
- XV. That the main grievance of the complainant in the present complaint from respondent/builder is that complainant has duly paid the amounts when called upon by respondent/builder but the said unit was canceled by them due to non-payment, but no demand letter was communicated by respondent for payment of dues.

- XVI. That due to the negligence in not providing the demand letter the complainant unit was canceled and he had to suffer losses.
- XVII. Further the cause of action arose on 16.02.2017 when builder buyer agreement was executed and further when the respondent stopped sending demand letters and canceled the said unit on one's own without taking into the recommendation of the complainant even after the latter had paid 52% of the total sale consideration.
- XVIII. That the complainant had purchased the residential unit with the intention that after purchase, his family will use the said unit for their personal use.
- XIX. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, they are liable to restore the canceled unit of the complainant or allot a new unit if the previous unit is sold.
- XX. That due to the above acts of the respondent the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Pass an appropriate order directing respondent to restore the canceled unit 2204, 22nd floor, tower 3 in Expressway Towers.
 - II. If the said unit is sold, pass an appropriate order directing respondent to provide the alternative Unit.

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5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint vide its reply dated 25.11.2024 on following grounds: -

- i. That at the outset, it is most respectfully submitted 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.
- ii. That the complainant is estopped from filling the present complaint by his own act, conduct, omissions, admissions, acquiescence and laches.
- iii. That the subject matter of the present complaint is pending before the arbitration tribunal and the arbitration clause is accepted, agreed and signed by the complainant in the builder buyer agreement. Hence, the present complaint may kindly be dismissed and the complainant be directed to present before the arbitral tribunal as per section 8 of the arbitration and conciliation act, 1996.
- iv. That the complainant has not come before this honourable court with clean hands and has suppressed true and material facts. He has intentionally not disclose the correct facts before this honorable court.
- v. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments. The complainant is a defaulter under section 19(6) & 19(7) of the real estate (regulation & development act, 2016. It is humbly submitted

- that the complainant failed to clear his outstanding dues despite several reminders that were issued by the respondent.
- vi. 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 company. This act and unlawful conduct of the complainant at various platforms led to the life threat to the promoters/directors and their respective families.
- vii. 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.
- viii. 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.
- ix. 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.

7. 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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

10. 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

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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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Pass an appropriate order directing respondent to restore the cancelled unit 2204, 22nd floor, tower 3 in Expressway Towers.

F.II If the said unit is sold, pass an appropriate order directing respondent to provide the alternative Unit.

12. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. The complainant applied for booking of 2BHK flat vide application no. 3290, thereafter the complainant was allotted a unit in the project namely "The Expressway Towers" unit no. 2204, tower-3, area admeasuring 644 /- sq.ft. (carpet area) at the rate of Rs. 4000/- as per the allotment letter annexed at page 14 of the complaint. The builder buyer agreement was executed on 16.02.2017 between the complainant and the respondent, the complainant applied for loan and received a loan sanction letter on 08.02.2018. It has been observed that the allottee as has paid only a sum of Rs.13,58,815/- against the total sale consideration of Rs.26,26,000/- as evident from the ledger account and builder buyer agreement annexed with the complaint. The



respondent vide demand letter dated 04.11.2019 and 04.05.2020 intimated the complainant for payment of the outstanding dues and finally a public notice was issued in Daily Hindi Newspaper 'Gurgoan mail' dated 19.06.2020 giving final opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 23.07.2021 vide which the unit allotted was cancelled. The allottee was responsible to make necessary payments as per the agreement the relevant section as per the act has been reproduced hereunder.

19.(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

14. The complainant is seeking direction to restore the allotment of subject unit in his favour after declaring the cancellation null and void. However, in view of findings recorded by the Authority with regard to the objection, no direction can be issued regarding restoration of allotment in the favour of the complainant as there was failure to pay the remaining amount of Rs.12,67,185/- as per the schedule of the payment which became due on 19.11.2018, 19.05.2019 and 19.11.2019 thereafter demand letters dated 04.05.2019 and 04.05.2020 were issued and a notice was published in the newspaper on 19.06.2020

which led to issuance of notice for cancellation by the respondent dated 23.07.2021.

15. Now, the question before the authority is whether this cancellation is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

16. It is to be noted that as per the schedule of collection of payment provided under section 5(iii)(b) of Affordable Group Housing Policy 2013, it is time linked payment plan instead of construction linked payment plan.
17. The complainant has not been able to show as to how the cancellation is void and illegal. When despite issuance of demands as well as reminders followed by public notice, he failed to clear the dues against the allotted unit, then the respondent was left with no alternative but to cancel the same. The cancellation letter has been issued by the respondent on 23.07.2021. On 19.06.2020, the respondent published a list of defaulters for payment in the daily Hindi newspaper Gurgoan Mail and cancelled the unit as per the provisions of the policy and is valid one. But there is nothing on the record to show that the respondent has refunded the balance amount after deduction of





Rs.25,000/- as per the policy of 2013. Thus, the respondent is directed to refund the paid-up amount of Rs. 13,58,815/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.90% per annum from the date of cancellation i.e., 23.07.2021 till the actual realization of the amount (inadvertently mentioned as date of surrender/withdraw of allotment in proceedings dated 27.04.2023). The amount paid by the bank would be paid back first from the refundable amount and thereafter balance if any, shall be refunded to the complainant.

G. Directions of the authority

18. Hence, the authority hereby passes this order and issues 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/promoter is directed to refund the paid-up amount of Rs.13,58,815/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the of Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.90% per annum from the date of cancellation i.e., 23.07.2021 till the actual realization of the amount.
 - ii. Out of total amount so assessed, the amount paid by the bank /payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.

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- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
18. Complaint stands disposed of.
19. File be consigned to registry.

Dated: 25.07.2025

V.I. 3

Vijay Kumar Goyal

Member

Haryana Real Estate Regulatory
Authority, Gurugram



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