

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

Complaint no.: 1704 of 2024
Date of complaint: 01.05.2024
Order pronounced on: 08.01.2026

Savitri Devi

R/o: 334/25, Badli Road, Near Holi Child School, Ram
Kalan Colony, Bahadurgarh, Jhajjar.

Complainant

Versus

M/s Ocean Seven Buildtech Private Limited
Regd. Office At: - 2th Floor, Tilak Bhawan, Tilak
Marg, Jaipur.
Office at: B 505-506, Spaze I Tech Park, Sohna Road,
Sector 49, Gurugram, Haryana- 122001.

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Kanish Bangia (Advocate)
Shri Arun Yadav (Advocate)

**Complainant
Respondent**

ORDER

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



A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Expressway Towers", Sector-109, Gurugram.
2.	Project area	7.50 Acres
3.	Nature of Project	Residential (Affordable Group Housing)
4.	DTCP license no. and validity status	06 of 2016 dated 16.06.2016 Valid upto 15.06.2021
5.	Name of Licensee	M/s Ocean Seven Buildtech Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered Vide no. 301 of 2017 dated 13.10.2017 Valid upto 12.10.2021
7.	Unit no.	807, 8 th floor, Tower-6. (As per page 47 of complaint)
8.	Unit Admeasuring	645 sq. ft. carpet area and 99 sq. ft. balcony area (As per page 47 of complaint)
9.	Allotment Letter	19.03.2017 (As mentioned in BBA at page 47 of complaint)
10.	Approval of Building Plan	26.09.2016 (Taken from similar complaint of similar project bearing no. CR/4086/2020)
11.	Environmental Clearance	30.11.2017 (Taken from similar complaint of similar project bearing no. CR/4086/2020)
12.	Buyer's Agreement	12.06.2017 (As per page 45 of complaint)



13.	Possession Clause as per buyer's agreement	5.2 Possession Time <i>The company shall sincerely endeavor to complete the construction and offer the possession of the said unit within five years from the date of receiving of license ("Commitment Period")...</i> [Emphasis supplied]
14.	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>
15.	Due date of possession	30.05.2022 30.11.2021 Plus additional grace of 6 months in lieu of Covid-19 as per the HARERA Notification no.9/3-2020 dt. 26.05.2020. [Note: The due date is calculated from the date of environmental clearance (31.11.2017), being later.]
16.	Total sale consideration	Rs.26,29,500/- (As mentioned in BBA at page 50 of complaint)
17.	Amount paid	Rs.20,54,299/- (78.12% of TSC) (As per ledger account at page no.95 of complaint)
18.	Sanction letter (By SBI Bank for loan of Rs.20,00,000/-)	24.10.2017 (As per page 81 of complaint)

19.	Occupancy Certificate	Not obtained
20.	Offer of possession	Not offered
21.	Demand letter	04.05.2020 (As per page no.5, vide which documents filed by the respondent on 01.08.2025)
22.	Publication in Newspaper [Gurgaon Mail]	19.06.2020 (As per page no.6, vide which documents filed by the respondent on 01.08.2025)
23.	Demand letter	21.07.2021 (As per page no.94 of complaint)
24.	Cancellation letter	23.07.2021 (As per page no.3-4, vide which documents filed by the respondent on 01.08.2025)
25.	Re-allotment in favor of Sheekha Cecelia Gomes	05.11.2022 (As per page no.1-2, vide which documents filed by the respondent on 01.08.2025)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the complainant, Mrs. Savitri Devi W/o Mr. Randhir Singh is a law-abiding citizen of India. He booked and was allotted a residential apartment in the project namely "Expressway Towers" of the respondent and hence, is allottee within the meaning of Section 2 (d) and Section 2 (zg) of The Real Estate (Regulation and Development) Act, 2016.
- ii. That the respondent i.e., Ocean Seven Buildtech Pvt. Ltd is a company incorporated under the provisions of C.A, 1956 and having its corporate office at 505- 506, 5th Floor, Tower b4, Spaze I- Tech Park, Sohna Road, Gurugram- 122018 and is inter alia engaged in the business activities relating to construction, development, marketing & sales of various types of

- residential & commercial properties to its various customers/ clients and works for gain.
- iii. That the complainant who was caught in the web of false promises of the respondent and its agents, paid the initial amount towards the booking, accordingly filed the application form for allotment of a unit. complainant after having purchased the apartment in the said project were sent one detailed builder buyer's agreement and were requested to sign the agreement and return to the respondent. The same was signed on 13.06.2017.
 - iv. That as per the BBA, the building plans of the said Project were approved by Director General Town & Country Planning, Chandigarh, Haryana (DGTCP) who has granted license number 06 of 2016, a wholly owned subsidiary of M/s Ocean Buildtech Pvt. Ltd for setting up of Affordable housing complex on a land area of about 7.5 Acres situated at Village Babupur, Sector- 109, Gurugram, Haryana.
 - v. A payment was made by the complainant on 16.11.2016 for booking of a unit in the project namely Express Tower by Ocean Seven Buildtech Pvt. Ltd.
 - vi. That the agreement was executed between M/s Ocean Seven Buildtech Pvt. Ltd. and Savitri Devi W/o Randhir Singh on 12.06.2017 for unit no.807 in tower 6 on 8th floor admeasuring 645 sq. ft. which provides a total sale consideration of Rs.26,29,500/-.
 - vii. That the complainant had made the payment of huge amount of Rs.5,25,900/- vide receipt no. OSB/ET/1190 dated 14.06.2017 as an instalment to the respondent.
 - viii. That as per the further demand raised by the respondent, based on the payment plan, the complainant received a demand letter from respondent dated 23.10.2017 to clear the dues of Rs.3,73,533/-.

- ix. That the complainant had applied for home loan in SBI that got sanction to her on 24.10.2017 for Rs.20,00,000/-.
- x. That as per the further demand raised by the respondent, the complainant received a demand letter from respondent to clear the dues of Rs. 10,64,439/- on or before 19.11.2018. Thereafter the complainant had made a transaction of Rs.7,09,966/- through NEFT on 16.02.2019 to respondent and received the receipt dated 18.02.2019. Thereafter the complainant had made a transaction of Rs.6,86,958/- through NEFT on 25.05.2019 to respondent and received the receipt dated 11.06.2019.
- xi. That as per the further demand raised by the respondent, the complainant received a demand letter from respondent to clear the dues of Rs.3,31,978/- on or before 19.11.2019. That as per the further demand raised by the respondent, the complainant received a demand letter from respondent to clear the dues of Rs.6,63,951/- on or before 19.05.2020.
- xii. That though the payment to be made by the complainant was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.
- xiii. That after a year, the complainant received a letter dated 21.07.2021 for non-payments of dues within 15 days or else their allotment will be cancelled and as on 14.04.2024, there is a delay of 3 years in delivery of the unit and the occupation certificate is nowhere in the vicinity and the possibility of the delivery of the unit also seems to be difficult.
- xiv. Further, the complainant having dreams of his own residential flat in NCR signed the agreement in the hope that the flat will be delivered within a particular time period. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the



dream of owning a flat of the members of the complainant association was shattered due to dishonest, unethical attitude of the respondent.

- xv. The respondent has, despite having made multiple tall representations to the complainant, chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated complainant.
- xvi. The respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- xvii. That the complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- I. To handover the actual possession of the flat bearing no. 807 in Tower no.6, 8th floor, measuring 645 sq. ft. in a habitable condition.
 - II. To direct the respondent to execute the sale deed of the abovesaid flat in favor of the complainants immediately when the possession is given on receipt of OC.
 - III. To direct the respondent to obtain a valid OC and to issue OFP immediately.
 - IV. To direct the respondent to pay the delay penalty charges with interest as laid down in the RERA Act, 2016.
 - V. To restrain the respondent to cancel the unit till final decision of the case.
 - VI. To restrain the respondent from creating 3rd party rights on the said unit.
 - VII. To restrain the respondent from raising any fresh demand with respect to the project till the final offer of possession after obtaining of OC.
 - VIII. To ask for the balance payment from the complainant based on actual corresponding construction on the site after deducting the amount payable



to the complainant towards the delay in the delivery possession charges for the delay in delivery till date as per the guidelines laid in RERA, 2016.

- IX. To restrain the respondent from raising any bill which are not a part of buyer's agreement.
- X. To kindly order appointment of a Local Commissioner for a complete assessment of the project as on dated more specifically for the purpose of confirming the status as to the habitable condition as well as calculation of the super area and carpet area as the project is already delayed.
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 complainant.

6. The respondent has contested the complaint on the following grounds.
- That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.
 - That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely instalments.
 - That starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively. This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent. The suspension of the license and freezing of accounts, starting from Feb 2023 till date, have created a zero-time scenario for the respondent. Further, there is no delay on the part of the respondent project as it is covered under clause number 5.5 force Majeure, which is beyond control of the respondent.



- iv. That the final EC is CTE/CTO which has been received by the respondent in February 2018. Hence the start date of project is Feb 2018 and rest details are as follows.

Covid and NGT Restrictions	
Project completion Date	Feb-22
Covid lock down waiver	18 months
NGT stay (3 months approx. for every year) i.e., 6*3	18 months
Total Time extended to be extended (18+18) months	36 months
Accounts frozen & license suspended further time to be extended till the unfreezing of the accounts i.e. Feb- March 2024 (13 months)	Feb 2023 till date
	Mar-24
Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts	Mar-26

- v. As per the table given above, the final date for the completion of construction is Feb 25 in case the accounts are unfreezed by the competent authority on the date of filing this reply. From Feb 2023, the license has been suspended and accounts have been frozen by the DTCP Chandigarh and HRERA Gurugram.

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 submission made by the parties.

E. Jurisdiction of the Authority

8. 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

9. 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

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 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. Written submission made by the complainant:

12. The complainant has filed the written submissions on 12.12.2025 and made the following submissions:



- i. That multiple FIRs have been registered by the DTCP against the respondent for allegedly and fraudulently cancelling units on false grounds, including a newspaper advertisement falsely showing cancellation of units.
- ii. That despite receiving more than 80% of the total sale consideration, the respondent has illegally cancelled the complainant's unit. The speed-post receipt produced by the respondent bears pin code 124103 (Jhajjar), whereas the complainant's address as per the BBA (page 45 of the complaint) clearly mentions pin code 124507. This discrepancy clearly establishes that the alleged cancellation letter was never served upon the complainant and is wholly illegal, invalid, and fabricated. The newspaper cutting submitted by the respondent pertains to Gurugram, whereas the complainant is a resident of Bahadurgarh, further proving the fraudulent intent of the respondent.

G. Findings on objections raised by the respondent

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

13. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
14. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court,



particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

G.II Objections regarding force majeure.

15. The respondent/promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, major spread of Covid-19 across worldwide, suspension of license by the DTCP, Chandigarh and freezing of accounts by HRERA Gurugram etc. which is beyond the control of the respondent and are covered under clause 5.5 of the agreement. The respondent has further submitted that suspension of the license and freezing of accounts, starting from Feb 2023 till date have created a zero-time scenario for the respondent. Furthermore, the final EC is CTE/CTO which has been received by the respondent in February, 2018, hence the start date of project is Feb 2018. However, all the pleas advanced in this regard are devoid of merits. As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained environment clearance and building plan approval in respect of the said project on 30.11.2017 and 26.09.2016 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is

granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession was 30.05.2022. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Secondly, the licence of the project of the respondent was suspended by DTCP, Haryana vide memo dated 23.02.2023, due to grave violations made by it in making compliance of the terms and conditions of the licence. In view of the same and to protect the interest of the allottees, the bank account of the respondent related to the project was frozen by this Authority vide order dated 24.02.2023. It is well settled principle that a person cannot take benefit of his own wrong.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondent to handover the actual possession of the flat bearing no. 807 in Tower no.6, 8th floor, measuring 645 sq. ft. in a habitable condition.**
- H.II Direct the respondent to execute the sale deed of the abovesaid flat in favor of the complainants immediately when the possession is given on receipt of OC.**
- H.III Direct the respondent to obtain a valid occupation certificate and to issue offer of possession immediately.**
- H.IV Direct the respondent to pay the delay penalty charges with interest as laid down in the RERA Act, 2016.**
- H.V To restrain the respondent to cancel the unit till final decision of the case.**
- H.VI To restrain the respondent from creating 3rd party rights on the said unit.**
- H.VII To restrain the respondent from raising any fresh demand with respect to the project till the final offer of possession after obtaining of occupation certificate.**
- H.VIII To ask for the balance payment from the complainant based on actual corresponding construction on the site after deducting the amount payable to the complainant towards the delay in the delivery possession**

charges for the delay in delivery till date as per the guidelines laid in RERA, 2016.

H.IX To restrain the respondent from raising any bill which are not a part of buyer's agreement.

H.X To appointment of a local commissioner for a complete assessment of the project as on dated more specifically for the purpose of confirming the status as to the habitable condition as well as calculation of the super area and carpet area as the project is already delayed.

16. 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.
17. The complainant was allotted unit no.807 on 8th floor, in tower - 6, in the project "Expressway Towers" by the respondent/builder for a total sale consideration of Rs.26,29,500/- under the Affordable Group Housing Policy 2013. The buyer's agreement was also executed on 12.06.2017 interse parties. That as per the Affordable Group Housing Policy 2013, the possession of the unit was to be offered with 4 years from approval of building plans (26.09.2016) or from the date of environment clearance (30.11.2017). Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.05.2022. The complainant paid a sum of Rs.20,54,299/- (i.e., 78.12% of total sale consideration) up to 11.06.2019. The complainant is willing to retain the allotted unit in question.
18. The counsel for the respondent states that the unit has been cancelled on 23.07.2021 after issuance of demand letter dated 04.05.2020 and 21.07.2021 and published a publication of list of defaulters in newspaper "Gurgaon Mails" on 19.06.2020. Upon this, the counsel for the complainant submitted



that the respondent failed to carry out the construction of the project and failed to issued demands against the said unit.

19. Now, the question before the Authority is whether this cancellation letter dated 23.07.2021 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".

20. It is observed that the complainant failed to pay the remaining amount as per schedule of payment which becomes due on 19.11.2019 and 19.05.2020 for which a demand letter dated 04.05.2020, also served upon the complainant. and after this published a notice in the newspaper on 19.06.2020, which led to issuance of notice for non-payment of dues on 21.07.2021 and thereafter a notice for cancellation by the respondent on 23.07.2021.
21. However, in written submissions, the complainant has asserted that she never received the alleged cancellation letter dated 23.07.2021, on the ground that the pin code mentioned on the India Post receipt is 124103, whereas her correct pin code is 124507 and the same is evident from the buyer's agreement. It is evident from the earlier demand letter 21.07.2021 issued by the respondent, which were annexed in the present complaint by the complainant herself, the respondent issued the said demands on the pin code address 124103 and hence it can be said that the same were duly

served. Therefore, the contention raised by the complainant is unsustainable and is accordingly denied.

22. 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. Further as per Section 19(6) of the Act, 2016, every allottee, who entered into an agreement, shall be responsible to make necessary payment within the time period as specified in the said agreement. The relevant para is reproduced below:

"Section 19 Rights and Duties of Allottees

19 (6) Every allottee, who has entered into an agreement for 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."

23. Upon perusal of documents available on records and submissions made by both parties, the Authority observes that respondent has issued a notice for non-payments of dues letter 21.07.2021 (page 94 of complaint), vide which the respondent has raised a demand of Rs.6,63,946/- to clear the said demand within 15 days from the date of this letter, failing which allotment of the subject unit will be cancelled in terms of the Affordable Housing Policy, 2013 and immediately after 2 days of said demand the respondent issued a cancellation letter dated 23.07.2021 and cancelled the unit for non-payment of outstanding dues without complying with the statutory provisions of the Affordable Housing Policy, 2013.
24. It is further observed by the Authority, that as per the India Post receipt attached with demand letter dated 21.07.2021 and cancellation letter dated

- 23.07.2021, contains the same India Post receipt bearing receipt no. (EH766753416IN) of same date and time (23.07.2021 at 19:54).
25. The Authority also observed that the re-allotment to the third-party has been made on 05.11.2022 after cancellation of the unit on 23.07.2021. Then that facts should have been mentioned in its written reply dated 10.10.2024 filed by the respondent, which the respondent has failed to do so. The re-allotment letter dated 05.11.2022 was brought to the notice of the Authority only on 01.08.2025, during the course of arguments. Thus, it shows that the said document was created by the respondent in order to defeat the rights of the allottee i.e., complainant herein and any such document cannot be relied upon.
26. After considering documents available on records and submissions made by both parties, it is determined that the respondent has prematurely cancelled that allotment of subject unit, as vide demand letter dated 21.07.2021, the complainant was given an opportunity to clear the outstanding dues within a period of 15 days from the date of the said letter (i.e., by 06.08.2021). However, the respondent vide letter dated 23.07.2021 has arbitrarily cancelled the allotment of the allotted unit, which cannot be held valid in the eyes of law and is hereby set aside.
27. Further, during proceedings dated 01.08.2025, the counsel for the respondent has submitted that after cancellation of the said unit, the third-party rights has been created on 05.11.2022 and the said unit was allotted to Sheekha Cecelia Gomes. In view of the same, due to non-availability of the originally allotted unit, the respondent is directed to offer an alternate unit of the same size, at similar location, at same rate as agreed at the time of allotment and handover the physical possession after obtaining occupation certificate from the competent authority.

28. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

29. As per clause 5.2 of the buyer's agreement dated 12.06.2017, talks about the possession of the unit to the complainant, the relevant portion is reproduced as under: -

"5.2 Possession Time

The Company shall sincerely endeavor to complete the construction and offer the possession of the said unit within five years from the date of the receiving of license ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). However, in case the Company completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Agreement to Sell. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to sell and payments made as per Payment Plan."

30. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of



allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is not only in grave violation of clause 1(iv) of the Affordable Housing Policy, 2013, but also deprive the allottees of their right accruing after delay in possession.

31. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licenced under it and the same is reproduced as under for ready reference:

1 (iv) "All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

32. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained environment clearance and building plan approval in respect of the said project on 30.11.2017 and 26.09.2016 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no.9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.05.2022.

33. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may

be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under:

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

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

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

34. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
35. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
36. The definition of term 'interest' as defined under Section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default
37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
38. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over

possession by the due date as per the agreement. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the respondent/promoter shall be necessarily required to complete the construction of the project within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Therefore, in view of the findings given above, the due date of handing over of possession was 30.05.2022. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The respondent in its reply has contended that the complainant has not paid the outstanding instalments with interest. For that reason, the respondent has cancelled his unit and allotted to some other buyer. However, as per record, the complainant is not at default and has paid a considerable amount of money towards the sale consideration of the unit. Moreover, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

39. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of



possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

40. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

I. Directions of the Authority

41. 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 cancellation letter dated 23.07.2021, is not valid in the eyes of law and is hereby set aside. Therefore, the respondent is directed to offer an alternate unit of the same size, at similar location, at same rate as agreed at the time of allotment and handover the physical possession after obtaining occupation certificate from the competent authority.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid

- offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.
- iii. The respondent is directed to supply a copy of the revised statement of account after adjusting the delay possession charges within a period of 30 days to the complainant. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of revised statement of account.
 - iv. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
 - v. The arrears of such interest accrued from 30.05.2022 till the date of order by the Authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the Affordable Housing Policy, 2013 as well as buyer's agreement.
 - vii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same rate of interest which the promoter



shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

42. The complaint stand disposed of.

43. File be consigned to registry.

Dated: 08.01.2026


Phool Singh Saini

Member

Haryana Real Estate Regulatory
Authority, Gurugram



HARERA
GURUGRAM