BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 30.10.2025

NAME OF THE BUILDER		M/s Ocean Seven Buildtech Private Limited
PROJECT NAME		"Expressway Towers", Sector- 109, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/243/2025	Mira Kulshreshtha Vs. M/s Ocean Seven Buildtech Private Limited
2.	CR/252/2025	Parimal Kumar Mishra Vs. M/s Ocean Seven Buildtech Private Limited
3.	CR/331/2025	Chinari Gandhi Subudhi Vs. M/s Ocean Seven Buildtech Private Limited
4.	CR/469/2025	Mohit Ohri Vs. M/s Ocean Seven Buildtech Private Limited

CORAM:

Shri Phool Singh Saini **Member**

APPEARANCE:

Shri Bhajan Lal Jangra and Shri Rishabh Sharma, Advocate **Complainants**

Shri Arun Yadav and Shri Kanishk Taneja, Advocate **Respondent**

ORDER

1. This order shall dispose of 04 complaints titled above filed before this 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, "Expressway Towers", Sector- 109, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Ocean Seven Buildtech Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.

3. The details of the complaints, 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	"Expressway Towers" at Sector 109, Gurugram.
Project area	7.5 acres
Nature of the project	Affordable group housing colony
DTCP license no. and other details	06 of 2016 dated 16.06.2016 Valid up to- 15.06.2021 Licensee- Sh. Shree Bhagwan C/o M/s Ocean Seven Buildtech Pvt. Ltd
Building plan approval dated	26.09.2016 (As information obtained from the planning branch)
Environment clearance dated	30.11.2017 (As information obtained from the planning branch)
RERA Registered/ not registered	301 of 2017 dated 13.10.2017 Valid up to 12.10.2021
Occupation certificate	Not yet obtained
Possession clause as per buyer's agreement	***"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."
Possession clause as per Affordable Housing Policy, 2013	***1(IV) of the Affordable Housing Policy, 2013*** *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.*
Due date of possession [as per Affordable Housing Policy, 2013]	**30.05.2022** **[30.11.2021 + 6 months]** (Note: the due date of possession is calculated from the date of environment clearance dated 30.11.2017 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)

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.	Relief sought
1.	CR/243/2025 Mira Kulshreshtha Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.02.2025	06, Ground floor, Tower 4 645 sq. ft. (carpet area) 99 sq. ft. (balcony area) [Page 27 of complaint]	**AL:** 20.05.2017 [Page 27 of complaint] **BBA:** **Not Executed**	**TSC:** **Rs.26,29,500/-** [As alleged at page 22 of complaint] **AP:** **Rs.27,18,243/-**	DPC along with Possession, and others

	RR: 15.05.2025			[As per ledger account at page 28 of complaint]	
2.	CR/252/2025 Parimal Kumar Mishra Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.02.2025 **RR:** 15.05.2025	1307 13th floor, Tower 5 645 sq. ft. (carpet area) 99 sq. ft. (balcony area) [Page 37 of complaint]	**AL:** 20.05.2017 [Page 29 of complaint] **BBA:** 12.06.2017 [Page 32 of complaint]	**TSC: Rs.26,29,500/-** [As per clause 4.1 of the BBA at page 37 of complaint] **AP: Rs.23,49,498/-** [As per ledger account at page 83 of complaint]	DPC along with Possession, execution of CD and others
3.	CR/331/2025 Chinari Gandhi Subudhi Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.02.2025 **RR:** 15.05.2025	401, 4th floor, Tower 6 644 sq. ft. (carpet area) 100 sq. ft. (balcony area) [Page 34 of complaint]	**AL:** 20.05.2017 [Page 28 of complaint] **BBA:** 03.06.2017 [Page 29 of complaint]	**TSC: Rs.26,26,000/-** [As per clause 4.1 of the BBA at page 34 of complaint] **AP: Rs.27,14,626/-** [As per ledger account at page 69 of complaint]	DPC along with Possession, execution of CD and others
4.	CR/469/2025 Mohit Ohri Vs. M/s Ocean Seven Buildtech Private Limited **DOF:** 05.02.2025 **RR:** 15.05.2025	702, 7th floor, Tower 05 645 sq. ft. (carpet area) 99 sq. ft. (balcony area) [Page 37 of complaint]	**AL:** 20.05.2017 [Page 29 of complaint] **BBA** 31.05.2018 [Page 32 of complaint]	**TSC: Rs.26,29,500/-** [As per clause 4.1 of the BBA at page 37 of complaint] **AP: Rs.27,18,250/-** [As per ledger account at page 68 of complaint]	DPC along with Possession, execution of CD and others

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
RR	Reply received by the respondent
AL	Allotment Letter
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

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 similar. Out of the above-mentioned case, the particulars of lead case ***CR/469/2025*** titled as ***Mohit Ohri Vs. M/s Ocean Seven Buildtech Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

7. The particulars of the project, the details of 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:

CR/469/2025 titled as ***Mohit Ohri Vs. M/s Ocean Seven Buildtech Pvt. Ltd.***

S. No.	Particulars	Details
1.	Name of the project	Expressway Towers, Sector 109, Gurugram, Haryana.
2.	Project area	7.50 Acres
3.	Nature of the project	Affordable housing project
4.	DTCP license no.	06 of 2016 dated 16.06.2016
	License valid till	15.06.2021
	Licensed area	7.5 acres
	License holder	Sh. Shree Bhagwan C/o M/s Ocean Seven Buildtech Pvt. Ltd.

5.	HRERA registered/ not registered	**Registered** vide no. 301 of 2017 dated 13.10.2017
	HRERA registration valid up to	12.04.2022 (Including 6 months COVID extension)
6.	Building plan approval dated	26.09.2016 [Taken from similar complaint of similar project bearing no. CR/4086/2020]
7.	Environment clearance dated	30.11.2017 [Taken from similar complaint of similar project bearing no. CR/4086/2020]
8.	Unit no.	702, 7th floor, Tower-05. (As per clause 3.1 of the buyer's agreement dated 31.05.2018 at page 37 of complaint)
9.	Unit Admeasuring	645 sq. ft. carpet area 99 sq. ft. balcony area (As per clause 3.1 of the buyer's agreement dated 31.05.2018 at page 37 of complaint)
10.	Allotment Letter	20.05.2017 (Page no. 29 of the complaint)
11.	Buyer's Agreement	31.05.2018 (Page no. 32 of the complaint)
12.	Possession Clause as per buyer's agreement	**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 receiving of license*** *("Commitment Period") ...* [Emphasis supplied] (Page no. 44 of complaint)
13.	Possession Clause (as per affordable housing policy, 2013)	**1(IV) of the Affordable Housing Policy, 2013** *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.
14.	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. [Note: The due date is calculated form the date of environmental clearance (31.11.2017), being later.]
15.	Total sale consideration	Rs.26,29,500/- (As per clause 4.1 of the buyer's agreement dated 31.05.2018 at page 37 of complaint)
16.	Total amount paid	Rs.27,18,250/- (As alleged at page no. 23 of complaint and also ledger account at page no. 68 of the complaint.)
17.	Occupancy certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

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

I. That the complainant is an Indian resident and well conversant with facts of the present case. Hence, competent to sign, verify and file the present complaint before this Authority for seeking possession and delayed possession charges.

II. That the respondent is a registered company which had undertaken to develop the project namely "Expressway Towers" consisting of residential units/ flat under the Affordable Housing Policy, 2013 launched vide DTCP licence No. 06/2016 granted to the respondent. The project consisting of 1089 flats/units (one/two bedroom + SR) proposed to be developed over the land measuring 7.5 Acre situated at Village Babupur, Sector -109 of Gurugram, Haryana.

III. That as per representation, promises and tall claimed made by the respondent, complainant had signed and submitted an application dated 11.12.2016 for allotment of residential flat under Affordable Housing Policy, 2013 issued by Govt. of Haryana. That the draw was held on 19.05.2017 a unit no. 702 in Tower 05 on seventh floor admeasuring 645 sq. ft (carpet area) and 99 sq. ft. balcony area was allotted against total sale consideration of Rs.26,29,500/- vide allotment letter dated 20.05.2017.

IV. Subsequent thereto, an agreement to sell dated 31.05.2018 was entered into between the complainant and respondent.

V. That the respondent mischievously did not mention specific date of handing over the physical possession of the flat in the agreement to sell but it is mentioned in the clause 5.2 of the agreement to sell that the company shall sincerely endeavour to complete the construction and offer the possession of the said unit within five (5) years from date of receiving of licence.

VI. That the respondent obtained building plan approval on 26.09.2016 (as per the details available on website of DTCP) and received environmental clearance on 30.11.2017 as mentioned in the order dated 24.07.2024 by this Authority in case titled Rameshwar Singh vs M/s Ocean Seven Buildtech Pvt. Ltd. complaint no.7964 of 2022 however, the respondent had neglected to complete the project till date.

VII. That the respondent cannot override clause 1(iv) of Affordable Housing Policy, 2013 relating to completion of construction and possession. That the said clause shall override the possession time as mentioned by the respondent in agreement to sell in clause 5.2. Hence the due date of possession is to be reckoned from environmental clearance that is 30.11.2017 which comes to 30.05.2022 as decided by this Hon'ble Authority in case titled as Rameshwar Singh vs M/s Ocean Seven Buildtech Private Limited (possession date).

VIII. That the complainant had already paid sum of Rs.27,18,250/- upto 17.09.2021 which is over and above the agreed price of total sale consideration. However, the respondent had neglected to complete the project till date and no construction activity is going for the reason best known to the respondent.

IX. That the complainant is also entitled to seek input tax credit of GST pursuance to the order dated 05.11.2019 in case no. 55/2019, case titled as "Shri Hardev Singh & Ors. V/s M/s Ocean Seven Buildtech Pvt. Ltd." passed by the Hon'ble National Anti-Profiteering Authority. However, despite repeated request and reminders for settlement of the above in the cost and other payables by the complainant but the respondent refused to give the same hence committed the violation of the said judgment.

X. That there is a delay of 28 months in completion of the project as on date from 30.05.2022 to 30.05.2024.

XI. That the complainant visited several times in the office of the respondent and sent numerous mails calling upon to complete the project and handing over the possession but gave evasive reply and made illegitimate demands of money under the pretext the construction cost has gone above but were refused by the complainant. However, the complainant is ready to pay the legitimate balance demand as may be directed by this Authority at the time of possession.

XII. That to the knowledge of the complainant, the RERA registration no. 301 of 2017 of the project has also lapsed and penalty proceeding have been initiated and going on against the respondent for violation of RERA Act.

XIII. That it is evident from the alleged acts, deed and omission the respondent has neglected to complete the project and have grossly violated affordable housing norms notified by Haryana Govt.

XIV. That for the reason stated above, the complainant is left with no other efficacious remedy available except to file the present complaint before the

Authority for seeking pos/session and delayed interest for wilful breach of agreement to sell and alleged violation of section 11, 14 and 18 of the RERA Act, therefore are liable to be compensated by the respondent under RERA Act.

C. Relief sought by the complainant: -

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

   a. Direct the respondent to give delayed possession charges @ MCLR+2% from 30.05.2022 till the date of actual handing over of the possession of the flat at the prescribed rate of interest;
   b. Direct the respondent to complete the project and handover the physical possession.
   c. Direct the respondent to give completion certificate.
   d. The possession clause no. 5.2 mentioned in the buyer's agreement to sell is in violation of the Affordable Housing Policy, 2013, hence the respondent be directed to modify the said clause in terms of Policy, 2013.
   e. Direct the respondent to refund the excess amount of Rs.88,750/- paid by the complainant over and above the total sale consideration.
   f. Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.
   g. Direct the respondent to give input tax credit of GST by allowing refund with interest in terms of order dated 05.11.2019 passed by Hon'ble National Anti-Profiteering Authority.
   h. Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup Charges.
   i. Direct the respondent to pay the legal expenses.

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:

   i. That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.

ii. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely instalments.

iii. That starting from February 2023, the construction activities have been severely impacted due to the suspension of the license and the freezing of accounts by the DTCP Chandigarh and HRERA Gurugram, respectively. This suspension and freezing of accounts represent a force majeure event beyond the control of the respondent. 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 freezed & license suspended	Feb 2023 till date
further time to be extended till the unfreezing of the accounts i.e. Feb- March 2024 (13 months)	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 freezed by the DTCP Chandigarh and HRERA Gurugram.

12. 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

13. 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

14. 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

15. 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.

16. 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 objections raised by the respondent

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

17. 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.

18. 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.

F.II Objections regarding force majeure.

19. 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to give delayed possession charges at the prescribed rate i.e., MCLR+2% from 30.05.2022 till the date of actual handing over of possession of the flat.

G.II Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.

G.III The possession clause 5.2 mentioned in agreement to sell is in violation of Affordable Housing Policy, 2013 and the respondent be directed to modify the said clause in terms of Policy, 2013.

20. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.

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

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, — .....*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

22. As per clause 5.2 of the buyer's agreement dated 31.05.2018, 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."*

23. 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.

24. 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."*

25. **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.

26. **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.*

27. 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.
28. 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., 30.10.2025 is

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

29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

31. 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. Further, there is no document available on record to substantiate the claim of the respondent. Accordingly, the claim of the respondent is rejected being devoid of merits. Moreover, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

32. 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.

33. 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.

G.IV Direct the respondent to complete the project and handover the physical possession.

G.V Direct the respondent to give completion certificate.

34. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatiated that even after the lapse of more than 2 years from the due date of possession, the respondent has failed to complete the construction and apply for occupation certificate to the competent authority. The promoter is duty bound to obtain occupation certificate and hand over possession only after obtaining occupation certificate.

G.VI Direct the respondent to refund the excess amount of Rs.88,750/- paid by the complainant over and above the total sale consideration.

35. The details of the sale consideration and amount paid by the allottee in each case are provided herein below: -

S. No.	Complaint no.	Sale consideration as per clause 4.1 of BBA	Amount paid by the complainant
1.	CR/243/2025	Rs.26,29,500/-	Rs.27,18,243/-
2.	CR/252/2025	Rs.26,29,500/-	Rs.23,49,498/-
3.	CR/331/2025	Rs.26,26,000/-	Rs.27,14,626/-
4.	CR/469/2025	Rs.26,29,500/-	Rs.27,18,250/-

36. As per clause 4.1 of the buyer's agreement the sale consideration/sale price of Rs.26,29,500/- shall be payable as per the payment plan annexed as annexure-B, GST, service Tax, VAT, and other levies, duty if applicable shall be payable by the allottee over and above the sale consideration. Further, it was also agreed the service tax/VAT and other applicable taxes and charges of any nature whatsoever, which may be levied by the Government Authorities with prospective and retrospective effect shall be payable by the allottee over and above sale consideration mentioned herein above. The relevant clause 4.1 of the BBA is reproduce herein below: -

ARTICLE 4
SALE CONSIDERATION

4.1 Sale Price

That the allottee agrees to pay the company for the purchase of the said flat/ unit a ***sum of Rs.26,29,500/- admeasuring 645 sq. ft. (calculated @ Rs.4,000/- per sq. ft. of carpet area of the said unit, admeasuring 99 sq. ft. and balcony area calculated @ Rs.500/- per sq. ft. attached with the flat admeasuring ..... sq. ft.), (hereinafter referred to as "Sale Price/Sale consideration") shall be payable as per the payment plan annexed as 'Annexure 'B' (hereinafter referred as "payment plan"), G.S.T, Service tax, VAT any other levies duty if applicable shall be payable by the allottee over and above the sale consideration.*** *EDC shall be payable as per the said policy. The two-wheeler parking shall be identified and allocated by the company at the time of handing over of possession of the unit to the Allottee. The Service tax/VAT and all other applicable taxes and charges of any nature whatsoever, which may be levied by the Govt. Authority with prospective and retrospective effect shall be payable by the allottee over and above sale consideration mentioned herein above.*

37. In view of the above clause, the Authority observes that the sale consideration is exclusive of GST, Service Tax, VAT, and other levies, duty if applicable and the respondent is well within right to claim such amount as agreed between the parties and the same shall be payable by the allottee over and above the sale consideration. However, the respondent is directed to furnish the details of payment of such taxes paid to the concerned Authority. If the respondent/promoter failed to provide the details of taxes as well as applicable charges as per the law of land then the respondent shall refund the excess amount.

G.VII Direct the respondent to give anti-profiteering credit/input tax credit to the complainants.

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

38. The complainant has sought the relief with regard to direct the respondent to give anti-profiteering credit/input tax credit to the complainants and charge the GST as per rules and regulations. However, no specifications have been provided. The respondent/promoter is under obligation to adhere the provisions of HGST/CGST Act, 2017 and to pass on benefit, as applicable. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers

of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The complainant-allottee is at liberty to approach the competent authority for seeking relief in terms of applicable Act & Rules.

39. Further, the complainant has sought the relief to restrain the respondent from demanding Labour Cess, VAT, WCT and power backup charges. Although, as per record, no demand under the above said heads have been made by the respondent till date, however in clause 4.9 (iii) and (iv) of the buyer's agreement, it has been mentioned that the allottee is liable to pay separately the above-said charges as per the demands raised by the respondent. Therefore, in the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges.

- **Labour Cess: -**

40. The Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no. 962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the allottee cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **VAT (value added tax): -**

41. The promoter is entitled to charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

- **WCT (work contract tax): -**

42. The Authority is of the view that, as per the definition of term 'work contract' under Section 2(119) of the CGST Act, 2017, the allottee is neither an employer nor a contractor and the same is not applicable in the present case. Thus, the allottee cannot be made liable to pay the same to the respondent.

- **Power Backup Charges: -**

43. The issue of power back-up charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in affordable group housing colonies and services for which maintenance charges can be charged from the allottees as per consumption. Accordingly, the promoter can only charge maintenance/use/utility charges from the complainant-allottees as per consumption as prescribed in category-II of the office order dated 31.01.2024

G.IX Direct the respondent to pay the legal expenses.

44. The complainant is seeking above mentioned relief w.r.t legal expenses. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.***

(supra), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of legal expenses.

H. Directions of the authority

45. 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/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The arrears of such interest accrued from 30.05.2022 till the date of order by the authority shall be paid by the promoter to the allottee(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.

iii. 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.

iv. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the Affordable Housing Policy, 2013 as well as buyer's agreement.

vi. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

46. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.

47. Complaint as well as applications, if any, stand disposed off accordingly.

48. Files be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 30.10.2025