

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

Complaint no.	:	907 of 2025
Date of complaint	:	17.03.2025
Date of order	:	30.01.2026

Sudhir Kumar,
R/o: - Village- Bass (Balodi),
75 Basbaton, Rewari, Haryana-123101.

Complainant

Versus

M/s Ocean Seven Buildtech Pvt. Ltd.
Regd. office: B-4-505-506, Spaze I Tech Park,
Sohna Road, Sector-49, Gurugram-122018.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Akash Godhvani (Advocate)
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 thereunder or to the allottee 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 of the project	"Golf Heights", Sector 69, Gurugram
2.	Nature of the project	Affordable Housing
3.	DTCP license no. and validity status	28 of 2018 dated 02.05.2018
4.	RERA Registered/ not registered	GGM/285/2018/17 dated 12.10.2018 valid upto 20.04.2023
5.	Allotment Letter	14.03.2019 (page 23 of complaint)
6.	Unit no.	1505, Tower-3 (Page 23 of complaint)
7.	Unit area admeasuring	565 sq. ft. (carpet area) 99 sq.ft (balcony area) (Page 23 of complaint)
8.	Date of execution of Apartment Buyer's Agreement	Not executed
9.	Possession clause in Affordable Housing Policy, 2013	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.
10.	Date of environmental clearance	10.10.2019 (as per project details)
11.	Date of approval of building plans	20.07.2018 (as per project details)

12.	Due date of possession	10.04.2024 (Calculated as 4 years from date of EC as per the policy of 2013+ 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)
13.	Total sale consideration	Not on record
14.	Amount paid by the complainant	Rs.15,58,917/- (as per page 25 of complaint)
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

4. The complainant has made the following submissions: -
- I. That the complainant was approached by the respondent by an advertisement announcing a residential group housing project called 'Golf heights, Sector 69, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project. Respondent confirmed that the project had got building plan approval from the authority.
 - II. That the complainant was caught in the web of false promises of the agents of the respondent company and paid an initial amount of Rs.1,24,713/- to respondent.
 - III. That the complainant received an allotment letter dated 14.03.2019 for the unit bearing No. 1505 in Tower No. 3 2BHK (Type-2) having carpet area of 565 sq. ft. approx. and balcony area of 99 sq. ft. approx.
 - IV. That the complainants caught in the web of lies and false promises of the respondent and further made a payment of Rs.4,98,852/-, which is 20% of the amount, after receiving the allotment letter.

- V. That additional demands were made periodically by the respondent company; however, no builder-buyer agreement was ever signed. Whenever the complainant requested the signing of the builder-buyer agreement, the respondent showed reluctance to execute it, and to date, the respondent has not entered into a builder-buyer agreement with the complainant.
- VI. That the complainant against the demand notices raised by the respondent have paid a total sum of Rs.15,58,917/- in favour of the respondent.
- VII. That the complainant had sent multiple communications and made calls during the time intimating the respondent for the possession of the said unit. With great regret the complainant did not receive any revert from the respondent as to when the possession of the unit will be handed over and kept excusing the complainant on pretext or the other.
- VIII. That the complainant kept chasing the respondent for execution of builder buyer agreement, but to utter shock of the complaint after paying almost 50% of the sale consideration, the respondent has still not executed the builder buyer agreement.
- IX. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent individually chasing the respondent for construction on very regular basis. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession.
- X. That after losing all hope from the respondent and having shattered and scattered dreams of owning a home and also losing considerable amount of money. Hence, the complainant is constrained to approach this Authority for redressed of his grievance.

C. Relief sought by the complainant:

5. The complainant has sought following relief(s):
 - i. Direct the respondent to execute buyer's agreement, handover possession and to pay delay possession charges as per the Act.
6. 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:

7. The respondent vide its reply dated 01.10.2025 has contested the complaint on the following grounds:
 - i. That the subject matter is not maintainable before this Authority as the arbitration clause has been accepted, agreed and signed by the complainant in the builder buyer agreement.
 - ii. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments.
 - iii. 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.
8. 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

9. 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

10. 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

11. 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.

12. 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.

F. Findings on the objections raised by the respondent:**F. II Objection regarding complainant is in breach of agreement for non-invocation of arbitration.**

13. The respondent has contended 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. However, as per record, no buyer's agreement has been

executed between the parties. Further, 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. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

14. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article

141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the reliefs sought by the complainant:

G.1 Direct the respondents to execute buyer's agreement, handover possession and to pay delay possession charges as per the Act.

15. The complainant has submitted that despite receipt of an amount of Rs.15,58,917/- from him, the respondent has failed to enter into a registered buyer's agreement against the allotted unit till date. Thus, seeking the relief of execution of buyer's agreement against the booked unit in his favour. The Authority observes that despite receipt of considerable amount against the booked unit back in 2021 from the complainant, the respondent-promoter has failed to enter into a written agreement for sale against the unit in question and has failed to get the unit registered in his name till date. Hence, it is violation of the provisions of the Act, and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondent-promoter is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed

with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

16. 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."*

17. 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."

18. **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 10.10.2019 and 20.07.2018 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 10.04.2024.

19. **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.
20. 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.
21. 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., 30.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
22. 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. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *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;*

(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. 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 delay possession charges.
24. 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 10.04.2024. 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. 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.
25. 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 on the paid-up amount at prescribed rate, for every month of delay from due date of possession i.e., 10.04.2024 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.

26. Further, as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the allottee. 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 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.

H. Directions of the authority

27. Hence, the Authority hereby passes this order and issue 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 is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

- 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., 10.04.2024 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 arrears of such interest accrued from 10.04.2024 till the date of order by the authority shall be paid by the promoter to the allottee 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 before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iv. The respondent/promoter is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainant.
- v. 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 updated statement of account.
- vi. The respondent shall 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.
- 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/promoter 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.

- viii. The respondent shall not charge anything from the complainant which is not the part of the application form or provided under the Affordable Housing Policy, 2013.
28. The complaint stand disposed of.
29. File be consigned to registry.



(Arun Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2026



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