

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

**Complaint no. :** 3448 of 2025  
**Date of filing :** 21.07.2028  
**Date of decision :** 11.08.2026

Sanyam Jain  
R/o: - 345, Street No. 7, Ward No. 5,  
Adarsh Nagar, Gohana

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sanyam Jain  
Dheeraj Kumar

**Complainant in Person  
Advocate**

**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 complainants, 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                            | The Venetian, Sector- 70, Gurugram, Haryana                                                                                                                                                                                                       |
| 2.    | Nature of the project                          | Affordable group housing                                                                                                                                                                                                                          |
| 3.    | Project area                                   | 5.10 acres                                                                                                                                                                                                                                        |
| 4.    | DTCP license no.                               | 103 of 2019 dated 05.09.2019<br>Valid up to 04.09.2024                                                                                                                                                                                            |
| 5.    | RERA Registered/ not registered                | Registered<br>vide no. 39 of 2020 dated 27.10.2020<br>valid up to 02.09.2024                                                                                                                                                                      |
| 6.    | Allotment / demand letter                      | 09.03.2021<br>(Page 09 of the complaint)                                                                                                                                                                                                          |
| 7.    | Unit no.                                       | 307, & Tower-1<br>(As per page no. 9 of the complaint)                                                                                                                                                                                            |
| 8.    | Unit area admeasuring                          | 571.105 sq. ft. (Carpet area) & 98 sq. ft. (balcony area)<br>(As per page no. 9 of the complaint)                                                                                                                                                 |
| 9.    | Date of buyer's agreement                      | Not executed.                                                                                                                                                                                                                                     |
| 10.   | Possession clause                              | NA                                                                                                                                                                                                                                                |
| 11.   | Possession clause in Affordable Housing Policy | <b>1 (iv)</b><br><i>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</i> |

|     |                                                                                                | <i>"date of commencement of project"<br/>for the purpose of the policy.</i> |
|-----|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 12. | Date of environment clearance                                                                  | Not yet obtained                                                            |
| 13. | Date of approval of building plans                                                             | 07.02.2020<br>(As per DTCP Website)                                         |
| 14. | Due date of possession                                                                         | Cannot be ascertained                                                       |
| 15. | Total sale consideration                                                                       | Rs.23,33,420/-<br>(As stated by the complainant at page 4 )                 |
| 16. | Amount paid by the complainant                                                                 | Rs.8,83,785/-<br>(As stated by the complainant in the complaint)            |
| 17. | Occupation certificate                                                                         | Not obtained                                                                |
| 18. | Offer of possession                                                                            | Not offered                                                                 |
| 19. | Demand letter                                                                                  | 26.08.2021<br>(page 11 of complaint)                                        |
| 20. | Surrender letter by the complainant for the reason as there is no construction started so far. | 01.02.2022 & 04.02.2022<br>(Page 19 & 21 of the complaint)                  |

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
  - I. That the complainant was allotted a unit number 307 Tower 1 on 09.03.2021 and has paid a sum of Rs. 8,83,785/- . No bba has been executed till date.
  - II. That the complainant requested refund vide letter dated 01.02.2022 and 04.02.2022 but no refund has been made.

### C. Relief sought by the complainant: -

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

I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest from the date of each payment till its realization.

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

**D. Reply by the respondent**

6. The respondent is contesting the complaint on the following grounds:

- I. That the complaint filed by the complainant is not maintainable before this Hon'ble Authority as there is Arbitration Clause 16.2 and according to said clause in case of any dispute between the parties, the matter shall be referred for Arbitration as per Arbitration and Conciliation Act, 1996 and an Arbitrator shall be appointed by the company. The builder buyer agreement was signed and accepted by the complainant. Therefore, the complainant can't go back with the agreement entered between the parties.
- II. That the complainant is a willful defaulter and deliberately, intentionally and knowingly has not paid timely installments as per the agreement. It is submitted that the complainant is a defaulter under section 19(6) & 19(7) of the real Estate (Regulation & Development) Act, 2016. The complainant has failed to clear his outstanding dues despite several reminders that were issued by the respondent.
- III. That the complainant has been engaged in unlawful conduct, including but not limited to making false and baseless allegations, spreading misinformation, and engaging in defamatory practices.



- IV. That in case cancellation notice by the respondent has been issued to the complainant and given time has been expired and thereafter the complainant by manipulation and in collusion with the bank or any staff of respondent company and got the funds transferred in the respondent company account and got the receipt from the company, it does not mean that cancellation has been revived in any manner whatsoever.
- V. That the complainant has been engaged in defamatory conduct on various platforms and public places. The respondent firmly believes that the complainant's actions are driven by malafide intentions. The complainant has engaged in unlawful conduct, including but not limited to making false and baseless allegations, spreading misinformation, and engaging in defamatory practices. These actions go beyond the realm of contractual disputes and suggest a deliberate attempt to harm the reputation and business interests of the respondent.
- VI. That the license of the respondent company has been suspended and DTCP has also freeze the bank accounts of the respondent, therefore the respondent was not able to construct the project in time manner. It is submitted 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, rendering the completion of construction by the stipulated date of February 25, 2023, practically impossible.

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.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the Judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on objections raised by the respondent**

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

14. The respondent has submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute. The authority is of the opinion that 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.

15. Further, in **Aftab Singh and ors. vs. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. Further, while considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**G. Findings on the relief sought by the complainant.**

**G.I Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest from the date of each payment till its realization.**

16. The complainant was allotted a unit bearing no. 307, in Tower-1 having carpet area of 571.105 sq. ft. along with balcony with area of 98 sq. ft. in the project of respondent named "Venetian" at Sector 70, Gurugram under the



Affordable Housing Policy, 2013 vide allotment letter dated 09.03.2021. No, builder buyer agreement was executed between the parties in respect of the subject unit. As per clause 1(iv) of the policy of 2013, all projects under the said policy shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Thus, the possession of the unit was to be offered within 4 years from the approval of building plans (07.02.2020) or from the date of environment clearance (not obtained yet). Therefore, the due date of possession cannot be ascertained. As per record, the complainant has paid an amount of Rs.8,83,785/- to respondent. Due to failure on the part of the respondent in obtaining environment clearance from the concerned authority and inordinate delay on part of the respondent to start construction of the project in question, the complainant has surrendered the unit/flat vide letter dated 01.02.2022 & 04.02.2022.

17. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision regarding surrender of the allotted unit by the allottee has been laid down and the same is reproduced as under:

**Clause 5(iii) (h) of the Affordable Housing Policy, 2013**

*"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

| Sr. No. | Particulars                                                 | Amount to be forfeited |
|---------|-------------------------------------------------------------|------------------------|
| (aa)    | In case of surrender of flat before commencement of project | Nil                    |



|      |                                                            |                        |
|------|------------------------------------------------------------|------------------------|
| (bb) | Upto 1 year from the date of commencement of the project   | 1% of the cost of flat |
| (cc) | Upto 2 year from the date of commencement of the project   | 3% of the cost of flat |
| (dd) | After 2 years from the date of commencement of the project | 5% of the cost of flat |

*Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".*

18. In the present matter, the subject unit was surrendered by the complainant-allottee vide letter dated 01.02.2022 & 04.02.2022 due to failure on the part of the respondent in obtaining environment clearance and has requested the respondent to cancel the allotment and refund the entire amount paid by him along with interest.
19. Clause 5 (iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015 provides that if the licensee fails to get environmental clearance even after one year of holding draw, the licensee is liable to refund the amount deposited by the applicant along with an interest of 12%, if the allottee so desires. The relevant provision is reproduced below for ready reference:

*"The flats in a specific project shall be allotted in one go within four months of the sanction of building plans. In case, the number of applications received is less than the number of sanctioned flats, the allotment can be made in two or more phases. However, the licensee will*

*start the construction only after receipt of environmental clearance from the competent authority.*

*The licensee will start receiving the further installments only once the environmental clearance is received. Further, if the licensee, fail to get environmental clearance even after one year of holding of draw, the licensee is liable to refund the amount deposited by the applicant alongwith an interest of 12%, if the allottee so desires."*

20. Also, the respondent has raised an objection that complainant allottee is a wilful defaulter and has failed to make payment of the instalments and has thus violated provisions of section 19(6) & (7) of the Act. In this regard, the authority observes that as per clause 5(iii)(b) of the Affordable Housing Policy, 2013, the licensee will start receiving the further installments only once the environmental clearance is received. As delineated hereinabove, the respondent has failed to obtain environmental clearance till date, thus, are not entitled to receive any further payments. Hence, the objection raised by the respondent is devoid of merits.

21. Further, as per amendment dated 09.07.2018 in Affordable Group Housing Policy, 2013, the rate of interest in case of default shall be as per rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. Rule 15 of the rules is reproduced as under:

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

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

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

22. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule

is followed to award the interest, it will ensure uniform practice in all the cases.

23. Thus, the complainant-allottee is entitled to refund of the entire amount deposited along with interest at the prescribed rate as per aforesaid provisions laid down under Affordable Housing Policy, 2013.
24. Hence, the respondent/promoter is directed to refund the entire paid-up amount as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, along with prescribed rate of interest i.e., @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions of the authority**

25. 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:
- The respondent is directed to refund the entire paid-up amount of Rs.8,83,785/- as per clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended by the State Government on 22.07.2015, along with prescribed rate of interest i.e., @10.80% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual realization of the amount.
  - A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.



**HARERA  
GURUGRAM**

Complaint No. 3448 of 2025

26. The complaints stand disposed of.  
27. Files be consigned to registry.

**Arun Kumar  
(Chairman)**

**Haryana Real Estate Regulatory Authority,  
Gurugram**

**Dated: 11.08.2026**



**HARERA  
GURUGRAM**