# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

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| **Complaint no.:** | **6203 of 2025** |
| **Date of filing of complaint:** | **09.12.2025** |
| **Date of Order:** | **23.07.2026** |

1. Pushpa Kotnala
2. Sandeep Kotnala

**Both R/o:** A-7, Airport Apartments, Vikas Puri, F-Block, New Delhi-110018 — **Complainants**

Versus

Ocean Seven Buildtech Pvt. Ltd.
**Corporate Office at:** 505-506, 5th Floor, Tower-B4, Spaze I Tech Park, Sohna Road, Sector-49, Gurugram-122018. — **Respondent**

**CORAM:**
Shri Phool Singh Saini — **Member**

**APPEARANCE:**
Sh. B. L. Jangra (Advocate) — Complainants
Sh. Kanishk Taneja (Advocate) — Respondent

## ORDER

1. This order shall dispose of the complaint titled as above filed before this authority 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 provision of the Act or the rules and regulations

made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

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

| S. No. | Particulars | Details |
|---|---|---|
| 1. | Name and location of the project | "Expressway Towers" at sector-109, Gurugram |
| 2. | Nature of the project | Affordable group housing |
| 3. | Project area | 7.5 acres |
| 4. | DTCP license no. | 6 of 2016 dated 05.09.2016 valid up to 04.09.2024 |
| 5. | RERA Registered/ not registered | Registered vide no. 301 of 2017 dated 13.10.2017 valid up to 12.10.2021 **(Registration lapsed)** |
| 6. | Unit no. | 305, 3rd floor & Tower-4 (As per page no. 32 of the complaint) |
| 7. | Unit area admeasuring | 644 sq. ft. (Carpet area) & 100 sq. ft. (balcony area) (As per page no. 32 of the complaint) |
| 8. | Approval of building plans | 26.09.2016 (As per project details) |
| 9. | Environment Clearance | 30.11.2017 (As per project details) |
| 10. | Allotment letter | 25.09.2018 (As per page no. 28 of the complaint) |
| 11. | Date of execution of agreement to sell | 24.12.2018 (As per page no. 30 of the complaint) |
| 12. | Payment plan | Time linked payment plan |
| 13. | Possession clause | ***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)........***<br>(As per page no. 42 of the complaint)<br>***Clause 1(iv) of the Affordable Housing Policy, 2013***<br>*"All such projects shall be required to be necessarily completed within four years from date of approval of building plan or grant of environmental clearance whichever is later. This date shall be referred to as the date of commencement of the project for the purpose of the policy."* |
| 14. | Due date of possession | 30.05.2022<br>(**Note:** Due date is to be calculated from the date of environment clearance being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)<br>**(In POD dated 23.07.2026, the due date was inadvertently mentioned as 05.09.2024, however in case of Affordable group housing projects clause 1(iv) of the Affordable Group Housing Policy, 2013 prevails if the possession clause of the buyer's agreement is not in consonance with the Policy, 2013)** |
| 15. | Total sale consideration | Rs.26,26,000/-<br>(As per page no. 35 of the complaint) |

| | | |
|---|---|---|
| 16. | Amount paid by the complainant | Rs.24,12,636/- (As per receipt information on page no. 65-71 of the complaint) |
| 17. | Occupation certificate | Not obtained |
| 18. | Offer of possession | Not offered |

**B. Facts of the complaint:**

3. The complainants have made the following submissions:

   i. That the complainants are Indian residents and well conversant with the facts of the present case hence competent to sign, verify and file the present complaint before this Hon'ble 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 which has been granted to the respondent. The project is consisting of 1089 units proposed to be developed over the land measuring 7.5 acres situated at Village Babupur, Sector -109, Gurugram.

   iii. That the complainants had signed and submitted an application dated 13.06.2018 and draw of flats/units were conducted on 24.09.2018. The complainants were allotted unit/flat No. 305 in Tower-04 on 3rd floor admeasuring 644 sq. ft. (carpet area) and 100 sq. ft. (Balcony Area) for a total sale consideration of Rs.26,26,000/- vide allotment letter dated 25.09.2018. Subsequent thereto, an agreement to sell was entered into between the complainants and respondent on 24.12.2018.

iv. That the respondent mischievously did not mention specific date of handing over the physical possession of the flat/unit 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 years from date of receiving of licence.

v. 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 Hon'ble Authority in case titled Rameshwar Singh vs M/s Ocean Seven Buildtech Pvt. Ltd. complaint no. 7964 of 2022 however, the respondent delayed the project despite the payment from the complainants and poor allottee(s) who spent their hard-earned money in purchasing the residential flats.

vi. That the respondent cannot override clause 1(iv) of Affordable Housing Policy, 2013 relating to possession which stipulates as under:

> *"All such projects shall be required to be necessarily completed within four years from date of approval of building plan or grant of environmental clearance whichever is later. This date shall be referred to as the date of commencement of the project for the purpose of the policy."*

vii. That the above-mentioned clause shall override the possession time as mentioned by the respondent in agreement to sell since the agreement is not in accordance with the date of completion stipulated in clause 1(iv) of the Affordable Housing Policy, 2013. Hence, the due date of possession is to be reckoned from environmental clearance that is 30.11.2017 which comes to 30.05.2022.

viii. That the complainants had already paid sum of Rs.24,12,636/- which is more than 91% of the total sale consideration of the flat but the respondent had neglected to complete the project till date.

ix. That the complainants are also entitled to 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 the National Anti- Profiteering Authority but the respondent had neglected to provide the same. However, despite repeated request and reminders for settlement of the above in the cost and other payables by the complainants, the respondent refused to give credit of the same hence committed the violation of the said judgment.

x. That there is a delay of 38 months in completion of the project as on date from 30.05.2022 to 30.08.2025. The complainants 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 complainants. However, the complainants are ready to pay the legitimate balance demand as may be directed by this Hon'ble Authority at the time of possession.

xi. That to the knowledge of the complainants, the RERA registration no. 301/2017 dated 13.10.2017 has also lapsed and penalty proceedings have been initiated against the respondent for violation of Act of 2016.

xii. 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.

xiii. That for the reasons stated above, the complainants are left with no other efficacious remedy available except to file the present complaint before the Hon`ble Authority for seeking possession 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 Act, 2016.

### C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
   i. Direct the respondent to pay the interest for every month of delay at prevailing rate of interest from 30.05.2022 till handing over the possession of the Unit/Flat No. 305 in Tower 04, on 3rd Floor admeasuring 644 sq. ft. Carpet Area and 100 sq. ft. Balcony in the project.
   ii. Direct the respondent to complete the project and handover the Unit/Flat No. 305 in Tower 04, on 3rd Floor admeasuring 644 sq. ft. Carpet Area and 100 sq. ft. Balcony in the project.
   iii. The possession clause no. 5.2 mentioned in 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 Affordable Housing Policy, 2013.
   iv. Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainants.
   v. Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup charges.
   vi. 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.
   vii. Direct the respondent to pay the legal expenses.

### D. Reply by the respondent:

5. The respondent contested the complaint on the following ground:

i. That the complaint filed by the complainants is grossly misconceived, wrong, unjustified and untenable in law besides being clearly extraneous and irrelevant and is liable to be dismissed.

ii. That the complainants have no locus standi to file the present application. It is submitted that they are estopped from filling the present complaint by his own act, conduct, omissions, admissions, acquiescence and laches.

iii. That the complaint filed by the complainants is not maintainable before this Hon'ble Forum 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. It is submitted that builder buyer's agreement dated 11.11.2017 was signed and accepted by the complainants. Therefore, the complainants can't go back with the agreement entered between the parties.

iv. That the complainants have not approached to this Hon'ble Authority with clean hands and suppressed true and material facts. The Complainants have intentionally not disclosed the correct facts before this Hon'ble Authority. The true and correct facts are as under:

a. The complainants are willful defaulters and deliberately, intentionally and knowingly have not paid timely installments as per the agreement. The complainants failed to clear their outstanding dues despite several reminders that were issued by the respondent.

b. The complainants were engaged in unlawful conduct, including but not limited to making false and baseless allegations, spreading misinformation, and engaging in defamatory practices. These actions go beyond the realm of contractual disputes and suggest a deliberate attempt to harm the reputation and business interests of the respondent company.

c. The respondent contends that the complainant's motive is marred by malafide intentions. The present complaint, founded on false, fabricated, and erroneous grounds, is perceived as an attempt to blackmail the respondent. The complainant, in reality, is acting as an extortionist, seeking to extract money from the respondent through an urgent and unjustified complaint. This action is not only illegal and unlawful but also goes against the principles of natural justice.

d. There is very apprehension that the complainants 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.

e. That in case cancellation notice by the respondent has been issued to the complainant and given time has been expired and thereafter the complainants 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 complainants have consistently delayed making payments in accordance with the clearly outlined payment plan attached to both the application and the builder buyer's agreement. Despite numerous attempts by the respondent company, including telephonic calls, emails, and registered mail, the complainants have not responded positively to the requests for timely payments. The complainants have failed to pay the required instalments on time despite several attempts through telephonic call, emails, and various letters, therefore, the unit of the complainants deemed cancelled in above noted circumstances as per norms and conditions laid down in affordable group housing policy, 2013 and agreement to sale.

vi. That the respondent asserts its rights to re-allot the cancelled unit of complainants to a genuine buyer who shall be interested in the project and having trust and faith on the respondent company. Therefore, the complainants have not paid the outstanding instalments with interest for that very reason. The respondent company has cancelled their unit and allotted the same to some other buyer who has faith and trust in the budget and company and agreed for the timely payment of the instalments.

vii. That the complainants have been engaged in defamatory conduct on various platforms and public places. These actions are not only detrimental to the reputation of the respondent company but also constitute a clear violation of ethical standards. The complainant's defamatory activities, which are well-documented, have caused irreparable harm to the respondent's business, its promoters, and its ongoing and future projects.

viii. That the respondent firmly believes that the complainant's actions are driven by malafide intentions. The complainants have 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.

ix. That as per clause 5(iii) (b) of the affordable housing scheme and as per the agreement, the possession of flats is to be offered within a period of 4 years from the date of sanctioning of building plan or from the date of issuance of environment clearance certificate. As per the clause mentioned above in the complaint, the final EC is CTE/CTO which has been received by the respondent on February, 2018. Hence the start date of project is February, 2018 and rest details are as follows:

| **Covid and NGT Restrictions** | | |
|---|---|---|
| Project completion Date | Feb, 2022 | |
| Covid lock-down waiver | 18 months | |
| NGT stay waiver (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-Mar 2024 (13 months) | March, 2024 | |
| Final project completion date (in case project is unfreezed) further time would be added till unfreezing the accounts | March, 2026 | |

As per table given above, the final date for the completion of construction is February, 2025 in case the accounts are unfreezed by the competent authority on the date of filing this reply. From February, 2023, the license has been suspended and accounts has been freezed by the DTCP Chandigarh and HRERA Gurugram. As a matter of fact, there is clause no 5.5 in the said agreement to sale that is force majeure wherein both the parties have signed this clause and all the delays are very well explained in this para so the project is not delayed by a single day.

6. 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:

7. 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

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case*

*may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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

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

**F.I Objections regarding force majeure.**

9. 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. Furthermore, the final EC is CTE/CTO which has been received by the respondent in February, 2018, hence the start date of project is February, 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 and thereafter due to several continuing violations of the provisions of the Act, 2016 by the respondent, in view 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. Thus, the promoter/respondent cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**F.II Objections regarding complainant is in breach of agreement for non-invocation of arbitration.**

10. The respondent has submitted that the complaint is not maintainable for the reason that there is 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.

11. 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 complainants are well within their rights 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 relief sought by the complainants:**

**G.I Direct the respondent to pay the interest for every month of delay at prevailing rate of interest from 30.05.2022 till handing over the possession of the Unit/Flat No. 305 in Tower 04, on 3rd Floor admeasuring 644 sq. ft. Carpet Area and 100 sq. ft. Balcony in the project.**

**G.II Direct the respondent to complete the project and handover the Unit/Flat No. 305 in Tower 04, on 3rd Floor admeasuring 644 sq. ft. Carpet Area and 100 sq. ft. Balcony in the project.**

**G.III The possession clause no. 5.2 mentioned in 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 Affordable Housing Policy, 2013.**

12. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.

13. The complainants intend to continue with the project and are 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."*

14. As per clause 5.2 talks about the possession of the unit to the complainants, 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."*

15. 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 complainants 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. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

16. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed 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."*

17. **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 (Inadvertently mentioned as 05.09.2024 in proceedings of the day dated 23.07.2026).

18. **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.*

19. 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.

20. 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., 23.07.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

21. 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;"*

22. Therefore, interest on the delay payments from the complainants 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 complainants in case of delay possession charges.

23. 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 complainants 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.

24. 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.

**G.IV Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainants.**

25. 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.

26. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainants 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.V Direct the respondent to restrain from demanding Labour Cess, VAT, Work Contract Tax and Power Backup charges.**

27. The complainants have 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 the interest of justice and to avoid further litigation, the Authority is deliberating its findings on the above said charges:

- **Labour Cess: -** The issue of labour cess 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 demand of labour cess is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent-builder who is solely responsible for disbursement of the said amount.
- **VAT: -** 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 i.e., depending upon the area of the flat allotted to the complainants vis-à-vis the total area of the particular project. However, the complainants 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.

- **WTC (Work Contract tax):** - The complainants are seeking above mentioned relief with respect to restraining the respondent from demanding Work Contract Tax. At this stage, it is important to stress upon the definition of term 'work contract' under Section 2(119) of the CGST Act, 2017 and the same is reproduced below for ready reference:

  *"(119) – works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"*

  After considering the above, the Authority is of the view that the complainants/allottee are neither an employer nor a contractor and the same is not applicable in the present case. Thus, the complainants/allottee cannot be made liable to pay the same to the respondent.

- **Power Backup Charges:** - 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. According, the promoter can only charge maintenance/use/utility charges from the complainants-allottee as per consumption as prescribed in category-II of the office order dated 31.01.2024.

**G.VI 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.**

28. The complainants have submitted that they are 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 National Anti-Profiteering Authority. The Authority observes that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e., GST, by incorporating Section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

> *"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

29. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of Section 171 of HGST/CGST Act, 2017. 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 allottees are at liberty to approach the State Screening Committee Haryana for initiating proceedings under Section 171 of the HGST Act against the respondent-promoter.

**G.VII Direct the respondent to pay the legal expenses.**

30. The complainants are seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s**

**Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

## H. Directions of the authority:

31. 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 pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

   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 allottees 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 allottees before 10th of the subsequent month as per Rule 16(2) of the Rules.

   iii. The respondent 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 complainants.

iv. The complainants are 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.

v. The respondent shall handover possession of the flat/unit and execute conveyance deed in favour of the complainants 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.

vi. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

vii. The respondent shall not charge labour cess as well as work contract tax from the complainants-allottee.

viii. The respondent can charge VAT from the complainants where the same was leviable, at the applicable rate, if they have not opted for composition scheme. Further, the promoter shall charge actual VAT from the complainants paid by it to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant's vis- à-vis the total area of the particular project. The complainants 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 head.

ix. The respondent can charge maintenance/use/utility charges from the complainants-allottee as per consumption as prescribed in category-II of the office order dated 31.01.2024.

x. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement or provided under the Affordable Housing Policy, 2013.

32. The complaints stand disposed of.

33. File be consigned to the registry.

**(Phool Singh Saini)**
**Member**
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2026