

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Date of decision: 07.08.2024**

<b>Name of the Builder</b>		<b>Ocean Seven Buildtech Pvt. Ltd.</b>	
<b>Project Name</b>		<b>The Venetian</b>	
<b>S.no.</b>	<b>Complaint No.</b>	<b>Complaint title</b>	<b>Attendance</b>
1.	CR/4541/2023	Kamla Chauhan V/s Ocean Seven Buildtech Pvt. Ltd.	(Complainant in person) Arun Yadav (Respondent)
2.	CR/4559/2023	Vishal Chauhan V/s M/s Ocean Seven Buildtech Pvt. Ltd.	(Complainant in person) Arun Yadav (Respondent)

**CORAM:**

Ashok Sangwan

Member

**ORDER**

1. This order shall dispose off both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, The Venetian, Sector- 70, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Ocean Seven Buildtech Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question thus seeking refund of the unit along with interest.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"The Venetian", Sector- 70, Gurugram, Haryana.
<b>Project area</b>	5.10 acres
<b>Nature of the project</b>	Affordable group housing colony
<b>DTCP license no. and other details</b>	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others
<b>Building plan approval dated</b>	07.02.2020 (As per DTCP website)
<b>Environment clearance dated</b>	Not yet obtained
<b>RERA Registered/ not registered</b>	Registered vide no. 39 of 2020 dated 27.10.2020 Valid up to- 02.09.2024
<b>Occupation certificate</b>	Not yet obtained
<b>Possession clause as per Affordable Housing Policy, 2013</b>	<b>1(IV) of the Affordable Housing Policy, 2013</b> <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project</i>



S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant	Date of request of refund by the complainant	Relief sought
1.	CR/4541/2023 Kamla Chauhan Vs. M/s Ocean Seven Buildtech Private Limited  DOF: 09.10.2023 RR: 20.03.2024	1702, Type I, tower 5 571.10 5 sq. ft. (carpet area)  [Page 10 of complaint]	Not executed	Cannot be ascertained	TC: Rs. 23,33,420/- [As per page no. 7 of complaint]  AP: Rs. 11,78,381/- [page 14-15 of complaint]	12.09.2023 [Page 16 of complaint]	Refund along with prescribed rate of interest
2.	CR/4559/2023 Vishal Chauhan Vs. M/s Ocean Seven Buildtech Private Limited  DOF: 09.10.2023 RR: 20.03.2024	1806, Type I, tower 2 571.10 5 sq. ft. (carpet area)  [Page 10 of complaint]	Not executed	Cannot be ascertained	TC: Rs. 23,33,420/- [As per page no. 7 of complaint]  AP: Rs. 11,78,381/- [page 13-15 of complaint]	12.09.2023 [Page 16 of complaint]	Refund along with prescribed rate of interest

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4541/2023** titled as **Kamla Chauhan Vs. M/s Ocean Seven Buildtech**

**Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

**CR/4541/2023 titled as Kamla Chauhan Vs. M/s Ocean Seven Buildtech Pvt. Ltd.**

S.no.	Particulars	Details
1.	Project name and location	"The Venetian", Sector- 70, Gurugram, Haryana.
2.	Project area	5.10 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and other details	103 of 2019 dated 05.09.2019 Valid up to- 04.09.2024 Licensee- Shree Ratan Lal and others
5.	Building plan approval dated	07.02.2020 (As per DTCP website)
6.	Environment clearance dated	Not yet obtained
7.	RERA Registered/ not registered	Registered vide no. 39 of 2020 dated 27.10.2020 Valid up to- 02.09.2024
8.	Allotment letter	09.03.2021 [Page 10 of complaint]
9.	Builder buyer agreement	Not executed
10.	Flat no.	1702, Type I, tower 5 [Page 10 of complaint]
11.	Unit admeasuring	571.105 sq. ft. (carpet area) (Page 10 of the complaint)

12.	Possession clause as per Affordable Housing Policy, 2013	<b>1(IV) of the Affordable Housing Policy, 2013</b> <i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project</i>
13.	Due date of possession	Cannot be ascertained
14.	Total sale price of the flat	Rs. 23,33,420/- [As per page 7 of complaint]
15.	Amount paid by the complainant	Rs. 11,78,381/- [As per page 14-15 of complaint]
16.	Surrender/Cancellation request by complainant seeking refund of the deposited amount	12.09.2023 [Page 16 of complaint]
17.	Occupation certificate	Not yet obtained
18.	Offer of possession	Not offered

### B. Facts of the complaint

6. The complainant has made the following submissions in the complaint: -
- I. That the complainant was allotted a unit bearing no. 1702, Tower- 5 having 571.105 sq. ft. carpet area and 98 sq. ft. balcony area in project of the respondent named "The Venetian" at Sector-70, Gurugram under affordable group housing vide allotment letter dated 09.03.2021.
  - II. That the total sale consideration of the said unit was Rs.23,33,420/- against which the complainant has paid a sum of Rs.11,78,381/- in all.

- III. That the construction at the project site has not been started after completion of approx. 30 months and environmental clearance of the project has still not been obtained by the respondent.
- IV. That due to an inordinate delay on part of the respondent to start construction of the project in question, the complainant has surrendered the flat vide letter dated 12.09.2023 and requested the respondent to refund the paid-up amount. However, the same has not been refunded till date. Hence, the present complaint.

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

7. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.
8. 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**

9. The respondent has contested the complaint on the following grounds:
- i. That this Authority lacks jurisdiction to adjudicate upon the present complaint as vide clause 16.2 of the builder buyer agreement both the parties have unequivocally agreed to resolve any disputes through arbitration.
  - ii. That the complainant is a willful defaulter and deliberately, intentionally and knowingly have not paid timely installments.
  - iii. That the respondent has not received the requisite approvals to commence the construction. The respondent has diligently followed the necessary procedures to obtain the required approvals and any delay in the commencement of work is solely due to this regulatory process. The

delay in the project's initiation is attributed to factors beyond the respondent's control such as regulatory approvals and external circumstances.

10. 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**

11. 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**

12. 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**

13. 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**

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**(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.*

14. 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 objections raised by the respondent**

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

15. 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.

16. 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 relief sought by the complainant.**

- G.I Direct the respondent to refund the paid-up amount along-with interest.**

17. The complainant was allotted a unit bearing no. 1702, in Tower-5 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. Thereafter, builder buyer agreement was not executed between the complainant and respondent 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.11,78,381/- 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 12.09.2023.
18. 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: -*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount to be forfeited</b>
(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".*

19. In the present matter, the subject unit was surrendered by the complainant-allottee vide letter dated 12.09.2023 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.
20. 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."***

21. 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, it is not entitled to receive any further payments. Hence, the objection raised by the respondent is devoid of merits.
22. 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.*



23. 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.
24. 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.
25. 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., @11% 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**

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent 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., @11% p.a. as prescribed under rule 15 of the Rules, 2017 from the date of each payment till the actual realization of the amount.

- ii. 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.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainant(s), and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant(s).
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid-up amount is mentioned in each of the complaints.
28. The complaints stand disposed off.
29. Files be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.08.2024

**HARERA**  
GURUGRAM