

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

Complaint no. :	4865 of 2021
Date of filing complaint:	20.12.2021
First date of hearing:	11.01.2022
Date of decision :	07.09.2022

Ocus Skyscrapers Realty Limited Registered office at: Ocus Technopolis Building, Golf Course Road, Sector-54, Gurugram, Haryana - 122001	Complainant
Versus	
Umesh Chander R/o: B-17, Press Enclave, Saket, New Delhi- 110017	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Lokesh Bholra (Advocate)	Complainant
Sh. Amit Kumar (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/builder under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the

Rules) for violation of section 19(6) of the Act wherein it is inter alia prescribed that the allottee shall be responsible for all rights, and duties under the provision of the Act or the rules and regulations made there under or to the promoter 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 allottee, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Ocus Medley", Sec 99, Gurugram
2.	Project area	4.14 acres
3.	Nature of the project	Commercial project
4.	DTCP License	173 of 2008 dated 27.09.2018 and valid up to
5.	Name of the licensee	Moonlight Buildwell Pvt. Ltd and others
6.	RERA Registered/ not registered	Registered 218 of 2017 dated 18.09.2017
	RERA Registration valid up to	17.09.2022
7.	Unit no.	G186, Ground floor [Annexure C/2 at page no. 27 of the complaint]
8.	Unit measuring (carpet area)	535.33 sq. ft. [Annexure C/2 at page no. 27 of the complaint] Change in unit area- 550.7 sq. ft. [Annexure C/7 at page no. 112 of the complaint]



9.	Date of allotment	N/A
10.	Date of execution of builder buyer agreement	16.12.2013 [Annexure C/2 at page no. 22 of the complaint]
11.	Possession clause	11(a) The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said building/said unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement. (emphasis supplied)
12.	Due date of possession	16.12.2018 [Calculated from the date of buyer's agreement i.e., 16.12.2013]
13.	Total sale consideration	Rs.70,62,073/- [Annexure C/2 at page no. 27 of the complaint]
14.	Total amount paid	Rs.49,56,770/- [Annexure C/9 at page no. 119 of the complaint]
15.	Reminders letter	05.12.2018, 09.01.2019, 16.02.2019, 20.05.2019, 06.02.2020, 04.03.2020 [Annexure C/8 on page no. 113-118]



		of the complaint]
16.	Payment plan	Construction linked payment plan [Page 53 of the complaint]
17.	Occupation Certificate	25.09.2018 [Annexure C/4 at page no. 82 of the complaint]
18.	Offer of possession	22.10.2018 [Annexure C/6 at page no. 111 of the complaint]
19.	Surrender of booking	30.09.2019 [Page 18 of the reply]

B. Facts of the complaint:

3. That the respondent showed interest in the project namely Ocus Medley and applied for a unit No. G-186 admeasuring 535.33 square feet in the said complex of the complainant and also made a payment of Rs.5,00,000/- as a booking amount vide cheque bearing no.9970 dated 11.01.2013.
4. That the respondent further made a payment of rs.44,56,770/- with different cheques, for which the complainant issued a receipt nos. OM/1422, OM/1979, OM/2506, OM/2540, OM/2656, OM/3241, OM/3505, OM/3888, OM/00062, OM/04418, OMMR/00425, OMMR/00394 and OMMR/00426, dated 13.03.2013, 20.08.2013, 21.05.2014, 22.08.2014, 27.09.2014, 22.05.2015, 19.03.2016, 09.11.2016, 06.04.2017, 18.05.2017, 09.10.2017, 04.04.2018 and 30.04.2018 respectively.
5. Thereafter, the respondent entered into buyers agreement with the complainant on 16.12.2013 for the unit no. G-186, ground floor, admeasuring 535.33 square feet in the project "Ocus Medley" and the complainant allotted the above unit provisionally

for a total sale consideration of Rs.70,62,073/-, which includes BSP, EDC & ICD, IFMS, sinking fund, electricity connection charges, excluding GST and other statutory charges as applicable. The respondent also agreed to payment plan as mentioned in the buyer's agreement.

6. The respondent has made a total payment of Rs. 49,56,770/- till date to the complainant through cheques on different dates. That as per the buyer's agreement dated 16.12.2013, the complainant had provisionally allotted a unit no. G-186, ground floor, admeasuring 535.33 square feet to the respondents. That as per clause 11 of the buyer's agreement, the complainant had agreed to deliver the possession of the said unit within 60 months from the date of the buyer's agreement dated 16.12.2013 with an extended / grace period of 6 months. in pursuant to which the delivery of possession should be on or before 16.06.2019.
7. Although, the complainant was not under any obligation to send any reminders to the respondent to make the outstanding payments, it is humbly submitted that the complainant has in fact, addressed numerous reminders to the respondent for making the balance consideration with respect to the said unit.
8. The respondent paid no heed to the abovementioned reminders sent to the respondent for making the outstanding payment for the captioned unit. the complainant even after sending repeated reminders, received no response from the respondent.
9. The complainant has preferred to offer the possession of the unit to the respondent, vide offer of possession letter, dated

22.10.2018 alongwith the change of area letter, dated 22.10.2018, even after getting no response from the respondent believing that the respondent upon receiving such offer may clear his dues and will accept the possession. It is pertinent to mention that as per the clause 20(c) of the said agreement, wherein the provisionally allotted unit super area was changed from 535.33 square feet to 550.7 square feet. The respondent paid no heed to the offer of possession letter also, the respondent has evidently failed to clear his obligations as per the said agreement.

10. It is most respectfully submitted that the respondents have miserably failed to make the final outstanding payments of rs. 61,94,780/- as per the final statement of accounts to the complainant and does not wish to take possession of the said unit which can be clearly seen from the failure to respond to the reminder letter and e-mails by the complainant.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s):
 - i. Direct the respondent to take immediate possession of his unit by making balance payment as per the final statement of account amounting to Rs. 61,94,780/- including interest from the date actual payment(s) become due till 01.11.2021.
 - ii. Direct the respondent to pay holding charges @ Rs.20/sq. ft. per month from the date of occupation certificate i.e. 25.09.2018 till the date of actual possession of the unit taken by the respondent.

D. Reply by respondent

12. It is submitted that the complainant has concealed the correspondence dated 30.09.2019 sent by the respondent along with the notification dated 05.12.2018 issued by the Authority, inter alia, in relation to return of amounts paid by allottees, subject to a maximum deduction of 10% of the booking amount
13. The complainant has further concealed its response dated 19.10.2019 to the respondent's refund letter. The complainant's rejection letter shows that the complainant has scant regard for the notification issued by the Authority, as the complainant, instead of following the said notification dated 05.12.2018 issued by the authority and directions contained therein, has wrongfully and with malafide intentions rejected the respondent's request by quoting some previous 'guidelines' which, in any event would be superseded by the said notification dated 5.12.2018.
14. It is further submitted that the active, deliberate and willful concealment of the respondent's refund request letter and the complainant's rejection letter, constitute a serious offence.
15. Without prejudice, it is submitted that the respondent was the sole earning member in his family comprising of his wife and a son and the respondent has suffered a cardiac arrest which has prevented him from continuing his employment in the merchant navy.
16. That at present the respondent and his family have no regular source of income and is dependent on his extended family members for his and his family's livelihood.

17. That the respondent's conduct has always been bonafide and the respondent, had paid more than a substantial amount of Rs. 49,56,770/- approximate layout of the total amount of Rs. 70,62,073.
18. The respondent, despite his hardship and such compelling circumstances, bonafide requested for the refund from the complainant. However, the complainant abjectly refused and thereby found an opportunity to blackmail the respondent to forfeit the entire payment made by the respondent and therefore did not pay any heed to the just and genuine request of the respondent.
19. It is submitted that in its letter dated 19.10.2019, the complainant has relied on a statement made by the chairman of this Hon'ble Authority in August 2018 to refuse the refund request of the respondent and shockingly blatantly disregarded the notification dated 05.12.2018 issued by the Hon'ble Chairman of this Hon'ble Authority. It is further submitted that even otherwise the said notification dated 05.12.2018 superseded the August 2018 statement relied upon by the complainant and therefore the said refusal of the just and genuine request of the respondent is without any basis and was solely refused in order to unjustly enrich itself by forfeiting the amount paid by the respondent with respect to the said unit.
20. Without prejudice and without admitting any liability whatsoever, it is also pertinent to note that the complainant has been earning interest on the amount of Rs. 49,56,770/- already paid by the respondent and has not even bothered to reduce such amount of

interest accrued/earned by the complainant on such amount, which further establishes the malafides and misconduct of the complainant.

21. The complainant had offered the possession of the unit to the respondent vide offer of possession letter dated 22.10.2018. However due to facts and circumstances mentioned in the preliminary objections, the respondent was unable to take possession of the unit. It is submitted that the complainant did not consider the request of the respondent about his inability to continue with the unit and therefore sent the letter offering possession of the unit knowing very well that the respondent has already apprise them about his poor financial condition due to his medical issues

E. Jurisdiction of the authority:

E. I Territorial jurisdiction

22. 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

23. Section 19 of the Act, 2016 provides the rights and duties of the allottees. Section 19(6), 19(7) and 19(8) is reproduced as hereunder:

Section 19 Rights and duties of the allottees-

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

24. 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 allottee.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to take immediate possession of his unit by making balance payment as per the final statement of account amounting to Rs.61,94,780/- including interest from the date actual payment become due till 01.11.2021

And

F.2. Direct the respondent to pay holding charges @Rs.20/ sq. ft. per month from the date of occupation certificate i.e. 25.09.2018 till the date of actual possession of the unit taken by the respondent.

25. The respondent- allottee was allotted the unit no. G-186, ground floor admeasuring 535.33 sq. ft. in the project "Ocus Medley", Sec 99 Gurugram by the complainant- builder for a total sale



consideration of Rs. 70,62,073/-. A buyer's agreement dated 16.12.2013 was executed between the parties. The due date of possession of the subject unit was fixed to be **within a period of sixty (60) months from the date of this agreement**. So, in this case due date for possession of the allotted unit is being taken from the date of execution of this agreement which comes out to be 16.12.2018.

26. After signing of flat buyer's agreement, the respondent allottee started depositing various amounts against the allotted unit and paid a sum of Rs. 49,56,770/- as is evident at page no. 119 of the complaint. The respondent-allottee stopped making remaining amount due and the complainant builder has sent various reminders dated 05.12.2018, 09.01.2019, 16.02.2019, 20.05.2019, 06.02.2020, 04.03.2020 for the payment of the outstanding dues. Despite issuance of various reminders, the respondent/allottee did not come forward to pay the outstanding dues. As per clause 8 of the buyer's agreement, the allottee was liable to pay the instalment as per construction linked payment plan opted by the complainant. Clause 8 of the agreement is reproduced under for ready reference:

Clause 8 Time is the essence

The Allottee(s) agrees that time is essence with respect to payment of Total Price and other charges, deposits and amounts payable by the Allottee(s) as per this Agreement and/or as demanded by the Company from time to time and also to perform/observe all the other obligations of the Allottee(s) under this Agreement. The Company is not under any obligation to send any reminders for the payments to be made by the Allottee(s) as per the schedule of payments and

*for the payments to be made as per demand by the Company
or other obligations to be performed by the Allottee(s).*

27. The respondent allottee has paid a sum of Rs. 49,56,770/- and failed to pay the remaining amount due, despite issuance of various reminders. The occupation certificate has been received on 25.09.2018 and unit has been offered on 22.10.2018. The respondent allottee has sent a letter dated 30.09.2019 to complainant builder for surrender of booking of unit no. G-186 where the allottee has requested for cancellation and refund the balance amount after the deduction made in accordance with the regulations framed by the authority.
28. In view of aforesaid circumstances, the complainant-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10% p.a. on the refundable amount from the date of request of surrender i.e. 30.09.2019 till the date of realization of payment.

G. Directions of the Authority:

29. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i) The complainant-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10% p.a. on the refundable amount, from the date of request of surrender i.e. 30.09.2019 till the date of realization of payment.
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022