

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

Complaint no.	:	4859 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	
Osama Qureshi R/o: T-275/3 Ahata Kioara Gurudwara, Bahi Ji Baba, Sadar Bazar, Delhi-110006	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Lokesh Bhola (Advocate)	Complainant
None	Respondent

EX PARTE 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.	G-61, Ground floor [Page 27 of the complaint]
8.	Unit measuring	459.02 sq. ft. [Page 27 of the complaint] Revised area- 484.55 sq. ft. [Page 106 of the complaint]
9.	Date of allotment	N/A
10.	Date of execution of builder buyer agreement	12.12.2014 [Page 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	12.12.2019 Calculated from the date of agreement i.e. 12.12.2014
13.	Total sale consideration	Rs.51,14,401/- [Page 27 of the complaint]
14.	Total amount paid	Rs.37,14,279/- [As per statement of account at page no. 114 of the complaint]
15.	Reminders letter	03.04.2014, 15.12.2014, 16.02.2015, 13.03.2015, 16.04.2015, 19.04.2016, 12.5.2016, 6.7.2016, 30.11.2016, 21.12.2016, 17.01.2017, 13.02.2018, 07.03.2018, 31.03.2018, 05.12.2018, 09.01.2019, 15.2.2019, 20.5.2019, 04.2.2020
16.	Payment plan	Construction linked payment plan [Page 53 of the complaint]

17.	Occupation Certificate	25.09.2018 [Page 80 of the complaint]
18.	Offer of possession	22.10.2018 [Page 103 of the complaint]

B. Facts of the complaint:

3. That the respondent showed interest in the said complex and applied for a unit no. G-61 admeasuring 459.02 square feet in the said complex of the complainant and also made a payment of Rs. 1,66,666/- as a booking amount vide cheque bearing no.018799 dated 21.11.2012.
4. That the respondents further made a payment of Rs.10,40,000/- vide cheque bearing Nos.216095, 796308, 796315 and 000002 dated 01.12.2013, 27.02.2014, 18.08.2014 and 28.08.2014 respectively, for which the complainant issued a receipt no. OM/2137, OM/2404, OM/2538 and OM/2542, dated 03.12.2013, 01.03.2014, 20.08.2014 and 28.08.2014 respectively.
5. Thereafter, the respondent entered into buyer's agreement with the complainant on 12.12.2014 for the unit no. G-61, Upper Ground Floor, admeasuring 459.02 square feet in the project "OCUS MEDLEY" and the complainant allotted the above unit provisionally for a total sale consideration of Rs.51,14,401/-, 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. 37,14,279/- till date to the complainant through cheques on different dates as mentioned herein above.
7. That as per the buyer's agreement dated 12.12.2014, the complainant had provisionally allotted a unit no. G-61, ground floor, admeasuring 459.02 square feet to the respondent. 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 12.12.2014 with an extended / grace period of 6 months. In pursuant to which the delivery of possession should be on or before 12.06.2020.
8. That it is submitted that the project of the complainant is already registered with this Hon'ble Authority vide registration no. 218 dated 18.09.2017 and the complainant had already finished construction in the said complex viz. 'Ocus Medley' and was granted occupation certificate by the concerned Authority on 25.09.2018.
9. 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. The said reminders are listed herein below:

Sr. No.	Date	Letter
1.	22.01.2013	Demand Letter

2.	26.03.2013	Demand Letter
3.	03.04.2014	Final Opportunity Letter
4.	15.12.2014	Final Opportunity Letter
5.	17.01.2015	Demand Letter Cum Service Tax Invoice
6.	16.02.2015	Reminder Letter
7.	13.03.2015	Reminder-II
8.	16.04.2015	Final Opportunity Letter
9.	16.03.2016	Demand Letter Cum Service Tax Invoice
10.	19.04.2016	Reminder Letter
11.	12.05.2016	Reminder-II
12.	06.07.2016	Final Opportunity Letter
13.	08.11.2016	Demand Letter Cum Service Tax Invoice
14.	30.11.2016	Reminder-I
15.	21.12.2016	Reminder-II
16.	17.01.2017	Final Opportunity Letter
17.	13.02.2018	Reminder-I
18.	07.03.2018	Reminder-II
19.	31.03.2018	Final Opportunity Letter

10. 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.
11. 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 459.02 square feet to

484.55 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.

12. That thereafter, again complainant sent, numerous reminders to the respondent for making the balance consideration with respect to the said unit. That till date, the respondents have not made any payment towards the outstanding dues and also did not reply to any of the letters and e-mails of the complainant.
13. It is most respectfully submitted that the respondents have miserably failed to make the final outstanding payments of Rs. 38,31,780/- as per the final statement of account 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:

14. 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. 38,31,780/- 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.

15. The respondent neither put in appearance through his counsel nor filed any written reply despite giving several opportunities. So, the authority was left with no option but to proceed with the complaint based on averments given in the complaint and the documents placed on the file.

D. Jurisdiction of the authority:

D. 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.

D. II Subject matter jurisdiction

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.

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.

E. Findings on the relief sought by the complainant:

E.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. 38,31,780/- including interest from the date actual payment(s) become due till 01.11.2021.

And

E.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.

Vide application letter dated 21.11.2012, the respondent-allottee was allotted the unit no. G-61, Ground floor admeasuring 459.02 sq. ft. in the project "Ocus Medley" Sec 99 Gurugram by the complainant-builder for a total sale consideration of Rs. 51,14,401/-. A buyer's agreement dated 12.12.2014 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 12.12.2019.

After signing of flat buyer's agreement, the respondent allottee started depositing various amounts against the allotted unit and paid a sum of Rs. 37,14,279/- as is evident from statement of account at page no. 114 of the complaint. The respondent-allottee stopped making remaining amount due and the complainant builder has sent various reminders dated 03.04.2014, 15.12.2014, 16.02.2015, 13.03.2015, 16.04.2015, 19.04.2016, 12.5.2016, 6.7.2016, 30.11.2016, 21.12.2016, 17.01.2017, 13.02.2018, 07.03.2018, 31.03.2018, 05.12.2018, 09.01.2019, 15.2.2019, 20.5.2019, 04.2.2020 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).

The authority observes that the respondent-allottee has paid a sum of **Rs.37,14,279/-** and failed to pay the remaining amount due, despite issuance of various reminders which has been placed on record. The complainant builder has obtained the occupation

certificate from the competent authority on 25.09.2018. Therefore, the respondent-allottee is directed to take possession of the unit after payment of outstanding dues within one month from the date of this order as per provisions of section 19(6) of the Act of 2016 otherwise complainant-builder can proceed with the cancellation of the unit and refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram. The said provision of Regulations, 11(5) of 2018, is reproduced here under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

Keeping in view the aforesaid legal provisions, the respondent-allottee is directed to take possession of the unit after payment of outstanding dues within one month from the date of this order otherwise complainant-builder can proceed with the cancellation of the unit and refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram

F. Directions of the Authority:

16. 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 respondent-allottee is directed to take possession of the unit after payment of outstanding dues within one month from the date of this order otherwise complainant-builder can proceed with the cancellation of the unit and refund the amount after deducting 10% of the sale consideration of the unit as per Regulation 11 of 2018 framed by Haryana Real Estate Regulatory Authority Gurugram

17. Complaint stands disposed of.

18. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022