

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

Complaint no. :	5032 of 2021
Date of filing complaint:	07.01.2022
First date of hearing:	09.03.2022
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	
Rajesh Sharma R/o: E-56, GK Enclave Part 1, New Delhi- 110048	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Lokesh Bhola (Advocate)	Complainant
None	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 24K, Sec 68, Gurugram
2.	Project area	4.44 acres
3.	Nature of the project	Commercial project
4.	DTCP License	76 of 2012 dated 01.08.2012 and valid up to 31.07.2020
5.	Name of the licensee	Perfect Constech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered 220 of 2017 dated 18.09.2017
	RERA Registration valid up to	17.09.2022
7.	Unit no.	1405, 14th floor [Annexure C/2 at page no. 26 of the complaint]
8.	Unit measuring (carpet area)	687 sq. ft. [Annexure C/2 at page no. 26 of the complaint] Change in unit and area- 1508 admeasuring 727 sq. ft. [Annexure C/9 at page no. 92 of the complaint]

9.	Date of allotment	N/A
10.	Date of execution of builder buyer agreement	14.03.2014 [Annexure C/2 at page no. 21 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	14.03.2019 Calculated from the date of the agreement
13.	Total sale consideration	Rs.66,12,375/- [Annexure C/2 at page no. 26 of the complaint] Rs. 73,55,993/- [As per final statement of account dated 09.11.2021 at page no. 102 of the complaint]
14.	Total amount paid	Rs. 29,25,403/- [As per final statement of account dated 09.11.2021 at page no. 102 of the complaint]
15.	Reminders letter	22.08.2019, 07.09.2019 09.10.2019, 10.02.2020

		17.03.2020 [Annexure C/5 at page no. 83-87 of the complaint]
16.	Payment plan	Construction linked payment plan [Page 52 of the complaint]
17.	Occupation Certificate	16.07.2019 [Annexure C/4 at page 81 of the complaint]
18.	Offer of possession	23.07.2019 [Annexure C/8 on page 90 of the complaint]
19.	Cancellation letter	25.05.2018 Cancellation of the unit no. 1405 [Annexure C/6 on page 88 of the complaint]
20.	Cancellation revoke letter	28.02.2019 Confirmation revival of the unit no. 1405 [Annexure C/7 on page 89 of the complaint]

B. Facts of the complaint:

3. That the respondent showed interest in the project Ocus 24K, Sec 68, Gurugram and applied for a unit no. 1405 admeasuring 687 square feet in the said complex of the complainant and also made a payment of Rs.4,50,000/- as a booking amount vide cheque bearing no.437724 dated 20.07.2013.
4. That the respondent further made a payment of Rs.11,62,072/- vide cheque bearing no.923115 dated 05.02.2014 drawn on Citi Bank, for which the complainant issued a receipt no. O24K/2138 dated 14.02.2014.
5. Thereafter, the respondent entered into buyers agreement with the complainant on 14.03.2014 for the unit no.1405, fourteen floor, admeasuring 687 square feet in the project "OCUS 24K" and the

complainant allotted the above unit provisionally for a total sale consideration of rs.66,12,375/- ,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. 29,25,403/- till date to the complainant through cheques on different dates.
7. That as per the buyer's agreement dated 14.03.2014, the complainant had provisionally allotted a unit no. 1405, fourteen floors, admeasuring 687 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 14.03.2014 with an extended / grace period of 6 months.
8. 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.
9. The respondent paid no heed to the abovementioned reminders sent to the respondent for making the outstanding payment for the captioned unit. The complainant after sending repeated reminders, and getting no response from the respondent, cancelled the captioned unit vide cancellation letter dated 25.05.2018 on account of non-payment of the outstanding amount as per the terms of the said agreement.

10. The respondent sent a request letter, dated 24.01.2019 to the complainant for revival of the captioned unit and withdrawal of cancellation letter. The respondent therein also issued 03 (three) cheques for making payment of the outstanding amount due for the captioned unit. The complainant upon such request made by the respondent agreed to withdraw the cancellation letter, vide confirmation for cancellation revoke letter, dated 28.02.2019.
11. The complainant thereafter has sent a letter, dated 03.08.2018 regarding the lease/management of service apartment in the said project whereby the complainant has sought the consent of the respondent for leasing their provisionally allotted unit to the operator company. In response to which the respondent has decided to not consent and/or confirmed to self-use of the said unit. in accordance to which the complainant has no other option and has considered the deemed consent of the respondent for leasing/management use of the said unit.
12. In pursuant to the same the complainant has thereafter also offered the possession of the unit to the respondent, vide offer of possession letter, the change of unit and area letter as per the clause 20(c) of the said agreement, alongwith the final opportunity for lease of the said unit all letter, dated 23.07.2019. it is also pertinent to mention here that said unit are marked for the self-use and rest for the management use and in accordance of the same the provisionally allotted unit is changed from unit no. 1405 to 1508 and super area was increased to 727 sq. ft. The respondent paid no need to the same even after revoking the cancellation letter, the

respondent has evidently failed to clear his obligations as per the said agreement.

13. That till date, the respondent has not made any payment towards the outstanding dues and also did not reply to any of the letters and e-mails of the complainant.
14. It is most respectfully submitted that the respondent has miserably failed to make the final outstanding payments of Rs. 65,08,959/- 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:

15. The complainant has sought following relief(s):
 - i. Direct the respondent to make the payment as per the final statement of account amounting to 65,08,959/- including interest from the date actual payment(s) become due till 09.11.2021 and take immediate possession of his unit.
 - ii. Direct the respondent to pay holding charges @ Rs.20/sq. ft. per month from the date of occupation certificate i.e. 17.07.2019 till the date of actual possession of the unit taken by the respondent.

D. Reply by respondent

16. That based on representation and assurances as extended by the complainant, the respondent agreed to buy the apartment by submitting an application dated 25.07.2013 for allotment. At that

time Rs. 4,79,637/- was also paid but no copy of agreement was provided but assured that it will be general in nature and in the best interest of investors/ users/ allottees.

17. That thereafter, approval of the allotment, an agreement was executed between the complainant and the respondent dated 14.03.2014. Since no prior copy of agreement was provided and respondent had already made the payment so respondent was having no choice than to simply sign the agreement without having any detailed discussions. However, when respondent approached the customer care department to ask about any changes, if can be suggested, it was denied. That the complainant booked a services apartment bearing unit no. 1405, floor- 14th, ad-measuring 687/- sq. ft. approx. for a total amount of rs. 66,12,375/- out of which an amount of rs. 16,70,340/- was paid by the respondent at the time of execution of the agreement.
18. That the respondent has made a total sum of Rs. 29,67,137/- to the complainant in lieu of the demand raised by the complainant.
19. That the complainant had to give the possession of the apartment within 60 months. These number of months were mentioned on very higher side as compared to normally mentioned in similar agreements, on enquiry it was replied that these are only for writing purpose but actual delivery will be given within 30 months. As per agreement, the due date of the possession of was 14.03.2019.
20. That the complainant with a further delay of 4 months had offered the possession of the apartment vide possession offer letter dated

25.07.2019. That to the shock of the respondent had also issued a change in unit allotted letter dated 23.07.2019, where in it was unilaterally mentioned that the allotted unit no. 1405 has been changed to unit no. 1508 with increased super area to 727 sq. ft. That the respondent was misrepresented by the complainant in order to dupe money by unilaterally changing it to a Larger one. The respondent has applied for two adjacent units in the complex for specific purpose but the complainant changed both units without any consent of the respondent (Allotee).

21. That the complainant with malafide intention had changed the allotted unit of the respondent had failed to disclose the same. however, frivolously sent the letter dated 23.07.2019, without even taking the consent of the respondent about the said change. That in addition of such illicit acts, the complainant has demanded more money from the respondent for their undue enrichment.
22. That the respondent agonized by acts of the complainant sent an email dated 25.07.2019 to complainant, requesting them to provide the reason for the change of unit without the consent of the respondent, copy of layout plan, copy of occupancy certificate and further requesting to arrange an tour of the location.
23. That the complainant has mentioned in the letter dated 25.07.2019, that the occupancy certificate has been received by the complainant. However, upon repetitive request by the respondent to provide the copy of the same, the complainant for the reasons best known to them choose not to share the same, which clearly shows the malafide intentions of the complainant. It is to submit

that the occupancy certificate is not a confidential document, which is also available on RERA portal, however, the respondent was not able to find the same, and for that reason, the respondent requested the complainant to provide the occupancy certificate through email.

24. It is submitted that the complainant herein has stated that the respondent had applied for the unit no. 1405 and it was allotted to the respondent as mentioned in the agreement. However, the complainant has unilaterally stated that in the possession letter that the allotted unit has been changed to unit no. 1505 with increased super area.
25. It is submitted that the respondent has always made the payment in lieu of the demand raised by the Complainant. It is denied that complainant after sending repeated reminders, and getting no response from the respondent, cancelled the captioned unit vide cancellation letter dated 25.05.2013 on account of non-payment of the outstanding amount as per the terms of the said agreement. It is to submit that the complainant by taking advantage of their dominant position is doing whatever they felt like with the sole intention of duping money and harass the respondent. That the said unit was cancelled without the knowledge of the respondent the said acts were of no means and were done for the reasons best known to the complainant. That the respondent has been paying on time on every demand raised by the complainant.

E. Jurisdiction of the authority:

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 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.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to make payment as per the final statement of account amounting to Rs.65,08,959/- including interest from the date actual payment become due till 09.11.2021 and take immediate possession of his unit.

26. Vide letter dated 23.04.2014, the respondent- allottee was allotted the unit no. G-118, ground floor admeasuring 401 sq. ft. in the project "Ocus24K" Sec 68 Gurugram by the complainant- builder for a total sale consideration of Rs. 58,33,548/-. A buyer's agreement dated 03.12.2013 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 03.12.2018.

27. After signing of flat buyer's agreement, the respondent allottee started depositing various amounts against the allotted unit and paid a sum of Rs. 16,15,651/- as is evident from final statement of account at page no. 113 of the complaint. The respondent-allottee stopped making remaining amount due and the complainant builder has sent various reminders dated 17.05.2014, 12.06.2014, 15.07.2014, 12.08.2014, 13.05.2015, 30.06.2015, 30.06.2017, 21.07.2017, 18.08.2017 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).

28. The authority observes that the respondent-allottee has paid a sum of **Rs.16,15,651/-** 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 17.07.2019. 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."

29. 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.2. Direct the respondent to pay holding charges @ Rs.20/sq. ft. per month from the date of occupation certificate i.e. 17.07.2019 till the date of actual possession of the unit taken by the respondent.

30. The developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed. Also, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

G. 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 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 due 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.
- ii) The complainant shall not levy/ recover any charges from the respondent which is not the part of the buyer's agreement.
- iii) The developer is directed to not levy holding charges at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

32. Complaint stands disposed of.

33. 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