

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

**Date of decision: 24.11.2022**

NAME OF THE BUILDER		M/s OCUS SKYSCRAPERS REALTY LTD.	
PROJECT NAME		OCUS MEDLEY	
S. No.	Case No.	Case title	Appearance in both the cases
1	CR/829/2018	Siril John ad anr. V/S Ocus Skyscrapers Realty Ltd.	<b>Complainant:</b> Shri Surender Attri Advocate <b>Respondent:</b> Shri Kapil Bakshi Advocate
2	CR/830/2018	Siril John and anr. V/S Ocus Skyscrapers Realty Ltd.	

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

Member  
Member  
Member

**ORDER**

1. This order shall dispose of all the 2 complaints titled as 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 between 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, Ocus Medley being developed by the same respondent/promoter i.e., Ocus Skyscrapers 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, seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply to status, 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>	<b>Ocus Medley, Sector 99, Gurugram</b>
<b>Possession clause: - 11(a) Schedule for possession of the Said Unit</b>	
<p><i>The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Building/Said Unit <b>within a period of sixty (60) months from the date of this agreement</b> 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. In case there is any delay on the part of the Allottee(s) in making of payments to the Company then notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Company.</i></p>	
<b>(Emphasis supplied)</b>	
<b>Occupation certificate: -</b>	
<p>➤ OC received dated <b>25.09.2018</b> for ground to 16<sup>th</sup> floor and <b>16.07.2019</b> for commercial building 17<sup>th</sup> to 19<sup>th</sup> floor.</p>	

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**Common details: -**

**Occupation certificate-**

25.09.2018 (Ground to 16<sup>th</sup> floor)  
and 16.07.2019 (17<sup>th</sup> to 19<sup>th</sup> floor)

**Offer of possession-** Not offered unit cancelled

**Due date of Possession -** (Calculated as 60 (sixty)  
months from date of execution of buyer agreement)

**RERA registration-** 218 of 2017 dated 18.09.2017

**DTCP License:** 173 of 2008 dated 27.09.2008 valid up to 26.09.2025

S. No.	Complaint no/ title/date of filing	Date of execution of agreement	Unit no. and area admeasuring	Due date of possession	Total Sale consideration and amount paid	Demand/reminder letters and cancellation letter
1	CR/829/2018 Siril John and Prem John V/s M/s Ocus Skyscrapers Realty Ltd. DOF: 04.09.2018	03.09.2013	G-157, Ground floor measuring 254 sq. ft	03.09.2018	TSC: Rs. 31,52,648 only  Amount paid: Rs. 12,72,824 only (As per receipts annexed)	<b>Demand Letters:</b> 17.01.2015, 16.03.2016, <b>Reminder Letters:</b> 01.10.2014, 30.10.2014, 25.11.2014, 16.02.2015, 13.03.2015, 16.04.2015, 19.04.2016, 12.05.2016, 11.07.2016 <b>Cancellation:</b> 10.11.2016
2	CR/830/2018 Siril John V/s M/s Ocus	03.09.2013	G-150, Upper Ground	03.09.2018	TSC: Rs. 29,73,440 only	<b>Demand Letters:</b> 17.01.2015, 17.03.2016

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Skyscrapers Realty Ltd. DOF: 04.09.2018		floor, admeasuri ng 320 sq. ft.		Amount paid: Rs. 11,90,419  only (As per receipts annexed in the file)	<b>Reminder letters:</b> 01.10.2014, 30.10.2014, 25.11.2014, 16.02.2015, 13.03.2015, 16.04.2015, 19.04.2016, 12.05.2016, 07.07.2016 <b>Cancellation Letter:</b> 10.11.2016
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of **complaint case bearing no. 829/2018 titled as Siril John V/S M/s Ocus Skyscrapers Realty Ltd. is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.**

**A. Project and unit related details**

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

**CR/829/2018 titled as Siril John V/S M/s Ocus Skyscrapers Realty Ltd.**

S. No.	Particulars	Details
1.	Name of the project	Ocus Medley, Sector 99, Gurugram
2.	Project area	4.14 acres
4.	Nature of the project	Commercial Colony
5.	DTCP license no. and validity status	173 of 2008 dated 27.09.2008 valid up to 26.09.2025
6.	Name of licensee	Moonlight Buildwell Pvt. Ltd. and 19 others
7.	RERA Registered/ not registered	Registered 218 of 2017 dated 18.09.2017
8.	Allotment Letter	22.01.2013 (Page 30 of complaint)
9.	Unit no.	G-157, Ground floor (Page 39 of complaint)
10.	Unit area admeasuring	254 sq. ft. (As per page 39 of complaint)
11.	Date of execution of apartment buyer agreement	03.09.2013 (As per page 38 of complaint)

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12.	Possession clause	<p><b>11(a) Schedule for possession of the Said Unit</b></p> <p><i>The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Building/Said Unit <b>within a period of sixty (60) months from the date of this agreement</b> 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. In case there is any delay on the part of the Allottee(s) in making of payments to the Company then notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Company.</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>
13.	Due date of possession	03.09.2018 [Calculated from date of execution of buyer's agreement]
14.	Total sale consideration	Rs. 31,52,648 only  (As per BBA on page 39 of complaint)
15.	Amount paid by the complainants	Rs. 12,72,824/-  (As per receipts annexed)

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16.	Occupation certificate /Completion certificate	Received on 25.09.2018 [As per R/2 page 29 of reply]
17.	Offer of possession	Not offered
18.	Demand/ Reminder Letters	01.10.2014, 30.10.2014, 25.11.2014, 17.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 16.03.2016, 19.04.2016, 12.05.2016, 11.07.2016
19.	Cancellation Letter	10.11.2016 (Page 43 of reply)

**B. Facts of the complaint**

8. That the complainants came to know from the reliable sources that M/s Ocus Skyscrapers Realty Limited, having its registered office at S-33, Green Park, Main Market, New Delhi-110016, is going to start the construction of a project under name & style 'Ocus Medley at sector 99, Gurgaon, Haryana and has inviting applications for purchase of flat/apartment.
9. That the complainants approached the respondent and showed their desire to purchase a unit in the above said project and enquired about the project and its cost. The complainant selected the desired unit from the project i.e., unit no. G-157 having super area 23.60 sq. mtrs (254 Sq. ft.). As per the payment plan intimated to them, they were required to pay Rs. 3 lacs at the time of booking and rest amount in accordance with the construction milestones. The basic sale price (BSP) of the said unit was settled as Rs 29,26,080/- and the total amount payable as Rs.31,52,648/- including EDC etc. which was required to pay against the said unit.

10. That for the booking of above said unit, the complainants deposited the cheque bearing no. 640508 dated 15.12.2012 of Rs.4,00,000/- drawn on ICICI bank payable in favour of the respondent as a booking amount which was duly received by them on 17.12.2012. Against the said payment, the respondent issued the receipt No.OM/1185 dated 19.12.2012 vide which they described that Rs. 3,88,010/- received as principal amount and Rs.11,990/- received as sales tax amount, totalling Rs.4,00,000/-. Thereafter, the respondent issued the acknowledgement receipt of cheque no. 640508 dated 15.12.2012 drawn on ICICI Bank of Rs.4,00,000/- and issued another letter dated 20.12.2012 in this regard.
11. That the respondent issued a demand letter dated 21.01.2013 demanding a sum of Rs. 2,03,299/- in respect of the unit which was supposed to be paid on or before 16.02.2013. The complainants, in lieu of the demand raised, deposited the amount of Rs. 2,03,299/- vide cheque no. 702290 dated 14.02.2013 which was received by respondent on 05.02.2013 duly acknowledged by putting the seal and signature.
12. The respondent issued a fresh demand letter dated 26.03.2013 demanding a sum of Rs.3,03,458/- in respect of the above said unit which was to be paid by 17.04.2013. The respondent, thereafter, issued the provisional allotment letter dated 26.03.2013 for unit no. G-157 to the complainants. In the meantime, the complainants deposited the amount of Rs. 3,03,458/- vide cheque bearing no. 702292 dated 17.04.2013 which was received by respondent on 28.03.2013 as duly acknowledged by them.
13. Thereafter, a buyer's agreement dated 03.09.2013 in respect of was executed inter se the parties. According to clause 11(a) of the said agreement, the said

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unit was to be delivered **within a period of sixty (60) months from the date of this agreement.** Accordingly, the due date of possession comes out to be 03.09.2018.

14. After execution of the agreement, the respondent again issued a demand letter cum service tax invoice dated 31.12.2013 demanding a sum of Rs.3,66,067/- which was to be deposited on or before 15.01.2014. The complainant deposited the amount of Rs.3,66,067/- vide cheque bearing no. 047184 dated 10.01.2014 which was received by respondent on 11.01.2014 duly acknowledged by them. The respondent even issued the receipt no.OM/2165, dated 15.01.2014 vide which they described that Rs. 3,03,458/- (Basic) + Rs.126/- (Basic Interest)+ Rs. 62,483 (EDC+IDC) totalling Rs.366,067/- received from the petitioner against the above said unit by confirming about the receiving of the cheque no.047184 dated 10.01.2014.
15. That the complainants then decided to visit the construction site in the month of March, 2014 after depositing the fourth instalment but to the utter shock of the complainants, the respondent had not started any construction over the said project. Since, it was a construction linked payment plan, the complainants refused to make any further payments as the construction had not even started.
16. That the respondent issued a cancellation letter dated 10.11.2016 by which they forfeited the earnest money of Rs. 5,85,216/- and brokerage of Rs. 3,92,430/- and interest on delay payment of Rs 2,82,526/- totalling to Rs. 12,60,172/- which meant the complainant was to be refunded an amount of Rs. 12,652/-. The said cancellation letter is illegal, null and void, ab-initio and

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arbitrary as the respondent has no right to issue the cancellation letter because they did not start the construction according to the settlement and terms and conditions of the allotment/buyer agreement.

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

17. The complainants have sought following relief(s):

- I. Direct the respondent to refund the amount of Rs. 12,72,824/- along with interest per annum.
- II. Direct the respondent to give compensation for mental agony and harassment and also award litigation costs.

18. 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**

The respondent has contested the complaint on the following grounds:

19. At the outset, every allegation, averment, contention and/or statement as contained in the complaint, is denied.
20. That the complaint suffers from concealment and suppression of material facts and record, as the complainant has suppressed the fact that he had booked three commercial units in the project Ocus Medley and the fact that he was irregular in making payments and the fact that he did not make payment towards his commercial units, which resulted in cancellation of his all three commercial units. Therefore, the complainant has approached the

Hon'ble Authority with unclean hands and hence for this reason alone the complaint is liable to be dismissed.

21. That without prejudice and admitting the complaint and its cause, the alleged cause of action of the complainant arose in March, 2014 when he stopped making further payments due to alleged non commencement of construction of the project and therefore it has been more than 4 years since then that the complainant has been sitting on his alleged cause and has not given any reason for the said delay in his whole complaint. Therefore, the present complaint is not maintainable and is liable to be dismissed.
22. That the complainant is not a consumer as defined in the Consumer Protection Act, 1986. As per the record the complainant along with his father had booked three commercial units along with the respondent in its project Ocus Medley, which is self-evident and clearly show that the complainant did not intend and book the commercial unit for his own personal use, and admittedly, has purchased the same for earning profit through investment, as the he project seemed lucrative to him for earning quick gains in booming real estate market at that time pertinently, the complainant had booked three commercial units one in his name i.e. G-157, the other one i.e., unit no. UG-150 in his and his father's name and another unit bearing no. UG-62 in his father's name i.e. Mr. Prem John. As a matter of fact, the complainant had booked the said units in question to earn profit by the amount allegedly paid by him, because property market is no more lucrative. If the complainants had booked the said unit for his own use, the complainants would not have sought refund of the amount of the amount allegedly paid by him. Hence, the complaint is liable to be dismissed solely on this ground.

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23. That the present complaint is not maintainable in law or on facts as the project has already been completed and the occupation certificate for the same has already been received by the respondent. The application for issuance of occupation certificate in respect of the commercial shop unit in question was made on 23 July, 2018 i.e., well before the completion of period of 60 months, which is tentative period for completion of project as mentioned in clause 11(a) of the builder buyer agreement dated 3rd September, 2013. Thus, the project in question is not an ongoing project' under rule 2(1)(0) of the Rules. Therefore, the project is complete in all respects and the present complaint is liable to be dismissed on this ground alone.
24. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyer's agreement dated 03.09.2013, as shall be evident from the submissions made in the following paras of the present reply.
25. That right from the beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders, etc. calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by the complainant and upon no response by the complainant for well over 2 years to the said reminders the respondent having no option had to cancel the unit in question, in terms of the buyer's agreement duly executed between the

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parties. Pertinently, the respondent issued payment reminder letters inter-alia dated 01.10.2014, 30.10.2014, 25.11.2014, 17.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 17.03.2016, 19.04.2016, 12.05.2016 and 11.07.2016. Also, the unit was cancelled vide cancellation letter dated 10.11.2016.

26. That clause 54 of the builder buyer's agreement further provides that in case of default in making payment the unit in question can be cancelled by the respondent on its sole discretion. The complainant, having defaulted in making timely payment of instalments, has thus lost any entitlement to the unit in question under the buyer's agreement.
27. That as has been submitted in the preceding paras, the construction of the project stands completed, and the respondent is in receipt of the occupation certificate in respect of the same. It was submitted that the respondent has issued offer of possession letters to all the buyers in the project Ocus Medley. It was submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. there is no default or lapse on the part of the respondent. It is the complainant who has consciously refrained from making the payments for the unit by raising false and frivolous excuses, pursuant to which the provisional allotment of the unit in question to complainant stood cancelled. it is evident from the entire sequence of events, that no illegality can be attributed to the respondent. the allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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28. 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.
29. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project. Accordingly, the authority is proceeding further to decide the matter based on the pleadings and submissions made by both the parties during the proceedings.

#### **E. Jurisdiction of the authority**

30. 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.

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## **E.II Subject matter jurisdiction**

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**

.....  
(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.*

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.

Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.I. Objection regarding complainants being investors:**

31. It was pleaded on behalf of respondents that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondents is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is



settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

*"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

32. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondents/promoters. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in the

Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainant**

**G. I. Direct the respondent to refund the amount of Rs. 12,72,824/- along with interest per annum.**

33. In the present case, the complainants booked a commercial unit in the project of the respondent named as "Ocus Medley" situated at sector 99, Gurgaon, Haryana for a total sale consideration of Rs. 31,42,648/-. Thereafter, they were allotted unit no. G-157 on ground floor. The complainants have in total paid an amount of Rs. 12,74,824/-.
34. The buyer's agreement between the parties was executed on 03.09.2013. Clause 11(a) of the said agreement specifies the schedule for handing over possession. According to the aforementioned clause, the completion of the building was to be done ***within a period of sixty (60) months from the date of this agreement.*** In view of the clause of BBA, the due date of possession has been calculated as 60 months from date of execution of BBA i.e., 03.09.2013 which comes out to be 03.09.2018. Meanwhile, even before the expiry of due date of possession, the unit of the complainant-allottee was cancelled vide letter dated 10.11.2016 after sending demand letters dated 17.01.2015, 16.03.2016 followed by reminder letters dated 01.10.2014, 30.10.2014, 25.11.2014, 16.02.2015, 13.03.2015, 16.04.2015, 19.04.2016, 12.05.2016, 11.07.2016. Given the fact that complainant did not clear his dues even after repeated reminders, his unit was cancelled vide letter dated 10.11.2016.

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35. The Authority is of the view that the cancellation of unit is valid. Both the parties have submitted written submission regarding what constitutes earnest money and forfeiture of amount. However, the cancellation of the unit was made by the complainant after coming into force of the Act of 2016. So, the respondent at the most can deduct 10% of the basic sale price of the unit and not more than that. Even the Hon'ble Apex court of law in case of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B Ram Chandra Raj Urs. Vs. Sarah C. Urs, (2015) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section-74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damage.
36. So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"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."*

37. Keeping in view the above-mentioned facts and since the allottees' unit was cancelled on 10.11.2016, so the respondent was bound to act upon the same. Hence the authority hereby directs the promoter to return the amount after



forfeiture of 10% of sale consideration with interest at the rate of 10.35% (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 cancellation i.e., 10.11.2016 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

**G.II. Direct the respondent to give compensation for mental agony and harassment and also award litigation costs.**

38. The complainants are claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

**H. Directions of the authority**

39. Hence, the authority hereby passes this order and issues 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-promoter is directed to refund the paid-up 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)

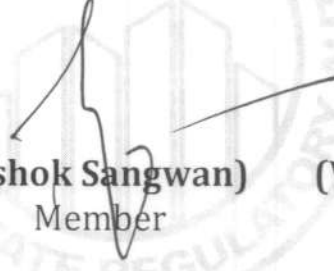
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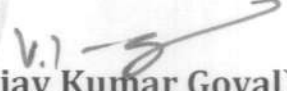
Regulations, 2018 with interest @ 10.35% p.a. on the refundable from the date of cancellation i.e., 10.11.2016 till the actual date of refund of the amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
42. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.11.2022