

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

Reserved on:-	12.07.2023
Date of pronouncement:-	23.08.2023

NAME OF THE BUILDER		Ocus Skyscrapers Realty Limited	
PROJECT NAME		Ocus 24K", Sector 68	
S. No.	Case No.	Case title	Appearance
1	CR/524/2021	Payal Bhatiya Chopra Vs Ocus Skyscrapers Realty Limited	Shri Harprit Singh Arora (Advocate) Shri Harshit Batra (Advocate)
2	CR/526/2021	Sachin Kapoor And Shagun Kapoor Vs Ocus Skyscrapers Realty Limited	Shri Harprit Singh Arora (Advocate) Shri Harshit Batra (Advocate)
<b>CORAM:</b>			
Shri Ashok Sangwan			<b>Member</b>

**ORDER**

1. This order shall dispose of both the 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 24K", Sector 68, Gurugram, being developed by the same respondent/promoter i.e., Ocus Skyscrapers Realty Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter and 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:

Project Name and Location	"Ocus 24K", Sector 68, Gurugram
<p><b><u>Possession clause: - Clause 11(a)</u></b>                      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 within a period of <b>sixty (60) months from the date of this agreement unless</b> 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.</p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>	
<p><b><u>Common details: -</u></b>                      Occupation certificate- 17.07.2019                      Offer of possession- 23.07.2019</p>	



Sr. 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	Relief
1.	CR/524/2021 Case titled as Payal Bhatiya Chopra Vs Ocus Skyscrapers Realty Limited DOF:- 11.02.2021	16.06.2014	1716, 17th floor 701 sq. ft.	16.06.2019	BSP:- Rs. 66,94,550/- AP:- Rs. 30,87,936 /-	Refund along with interest
2.	CR/526/2021 Case titled as Amar Bajaj and Sunita Bajaj Vs Ocus Skyscrapers Realty Limited DOF:- 27.01.2021	03.03.2014	902, 9th floor 905 sq. ft.	03.03.2019	BSP:- Rs. 85,52,250/- AP:- Rs. 30,43,392/-	Refund along with interest

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 as per the BBA, seeking award of refund the entire amount along with interest.
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. 524/2021 case titled as Payal Bhatiya Chopra Vs. Ocus Skyscrapers Realty Limited 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/524/2021 case titled as Payal Bhatiya Chopra Vs. Ocus Skyscrapers Realty Limited

S. N.	Particulars	Details
1.	Name of the project	"Ocus 24K", Sector 68, Gurugram
2.	Nature of the project	Commercial
3.	DTCP license no. and validity status	76 of 2012 dated 01.08.2012 valid upto 31.07.2020
4.	RERA Registered/ not registered	Registered as 220 of 2017 dated 18.09.2017 valid upto 17.09.2022

5	Unit no.	<p><b>As per BBA:</b> 1716, 17<sup>th</sup> floor (Page 49 of complaint)</p> <p><b>As per final SOA at time of offer of possession:</b> 1916, 19<sup>th</sup> floor (Page 34 of reply)</p>
6.	Unit area admeasuring	<p>701 sq. ft. (Page 37 of complaint)</p> <p>Revised area:- 726 sq. ft. (Page 34 of reply)</p>
7.	Date of execution of Apartment Buyer's Agreement	<p>16.06.2014 (Page 44 of complaint)</p>
8.	Possession clause	<p><b>11(a) Schedule for possession of the Said Unit</b></p> <p>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 <b>sixty (60) months from the date of this agreement unless</b> 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.</p>

9.	Due date of possession	16.06.2019 (Calculated as 60 months from the date of execution of BBA i.e., 16.06.2014)
10.	Total sale consideration	Rs. 66,94,550/- (As per BBA on page 50 of complaint)
11.	Amount paid by the complainant	Rs. 30,87,936/- (As per SOA on page 34 of reply)
12.	Occupation certificate /Completion certificate	17.07.2019 (Page 20 of reply)
13.	Offer of possession	23.07.2019 (Page 22 of reply)

**B. Facts of the complaint**

8. The complainant made the following submissions in the complaint:

- i. That in the initial phase of the deal the Complainant was made to apply vide Application in the month of August 2013, for a unit Number 1716, on 17th Floor, measuring 701 Sq. Ft., for a consideration of INR 60,28,600/-, in the Project OCUS 24K in Sector - 68, Gurugram.
- ii. That the Complainant had made the payments against Receipts acknowledged by the Respondent, vide Account Statements. That the Complainant submitted payments against the other Demand Letters issued by the Respondent, followed by the timely payments by the Complainant. Demand Letters were issued, even

before the execution of Builder Buyer Agreement, dated 16.06.2014. Further Construction was not carried, as per scheduled commitments, but the Respondent kept on raising Demands, for payments since reciprocal to the pace of timely construction. Keeping in view the pace of construction, and the intentions of the Respondent, the Complainant preferred not to commit default while making timely payments, in the Project of the Respondent.

- iii. That the Complainant had submitted signed Builder Buyer Agreement, along with all requisites and payments. As the Complainant expressed her desire to know the status of Construction in the project. Respondent however, again allured and motivated the Complainant and assured timely delivery of possession of the unit. In order to mask its own lapse, the Respondent had issued an unwarranted and unauthorized Demand Letters thereby raising demands of alleged balance payment, without making an offer of possession with occupancy certificate, thereby threatening the Complainant to impose holding charges, without completing construction in the project, in contravention of the terms of builder buyer agreement.
- iv. That without complying with the requisite pace of Construction, the Respondent had raised another Demand for balance amount, in contravention of the statutory provisions of Law. The Project, being ongoing, was registered in RERA. Respondent has not executed an Agreement to Sell, in the Format prescribed in the Act. Respondent has also invited payment from the Complainants

in excess of the specified limits. Under the circumstances, prevailing at the time, and considering the status of the Project, the Complainants decided to withdraw from the Project. All the requests for Refund could fetch no positive result.

- v. That the Construction in this project is not likely to be delivered in near future, as per commitment. The Complainant has realized that her money is being misused by the Respondent, and the Complainant is being cheated by the Respondent, by tendering fake excuses in order to misuse their hard-earned money. As per Agreement, the possession was to be delivered within 60 months. That it shall not be out of the way to mention here that the Construction in the Project was being carried on by the Respondent, at the time of booking by the Complainant. The Project is already delayed, and the priority of the Complainant is entirely changed, and had expressed her desire not to pay further and willingness to withdraw from the Project. That the Complainant had not filed any other case or Complaint on the same cause of action, in any other Court

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

9. The complainant has sought following relief(s):
- i. Direct the respondent to refund the paid-up amount along with interest at the prescribed rate.
10. 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**

11. The respondent has contested the complaint on the following grounds.

- i. That the builder buyer agreement for the said unit was executed between the parties on 16.06.2014. It is the practice of the real estate industry that the Builder / Developer issues a provisional allotment letter in the name of the allottee upon booking a unit in the developing project. Further, a builder buyer agreement is executed only once the allottee makes a payment of at least 30% of the total consideration of the Unit booked by it. Thus, the builder buyer agreement was executed only on 16.06.2014 with the complainant.
- ii. It was agreed in the Clause 11 (a) read with Clause 14 of the said agreement that the construction of the said unit shall be completed within 66 months from the date of execution of said agreement. Thus, the respondent was under an obligation to complete the said unit by 15.12.2019. However, in order to deliver the said unit to the complainant before the time period promised, the respondent was constructing the said project at a fast pace and therefore, the same was completed in July 2019. It is most respectfully submitted that the respondent had obtained the occupation certificate with respect to said project on 17.07.2019.
- iii. Thus, the respondent offered the possession of the said unit to the complainant vide letter, dated 23.07.2019, email, dated

25.07.2019 and email, dated 03.08.2019. Despite receiving the above letter/emails for offer of possession from the respondent, the complainant did not come forward to take over the said unit by paying outstanding amount. The respondent as a gesture of goodwill had also extended a rebate of 5% on the basic price as well as 50% waiver of delayed payment interest as stated in its letter offering possession. However, the complainant did not perform its obligation to pay the outstanding amount and take over the possession of the said unit.

iv. Although the respondent was not under any obligation to send any reminders to the complainant to make the outstanding payments, it is humbly submitted that prior and after addressing the Pre-Cancellation Letter, dated 05.09.2019, to the complainant, the respondent had in fact, addressed numerous reminders to the complainant for payment of the balance consideration with respect to the said unit.

V. In view of the above, it is submitted that the Complainant is chronic defaulters as she has failed and neglected to make timely payments with respect to the said Unit despite numerous reminders addressed to her. The above default has been committed by the Complainant, despite knowing the fact that timely payment of the consideration of the said Unit is essence of the said Agreement as was recorded in the said Agreement at Clause No.8. It is further submitted that let alone making the balance payments with respect to the said Unit, the Complainant



herein did not even bother to respond to the above-mentioned reminders issued by the Respondent.

- vi. It is submitted that the Complainant has failed and neglected to make the balance payments with respect to the said Unit and till date. It is submitted that a total amount of Rs.46,41,962/- due and payable with respect to the said Unit by the Complainant to the Respondent. It is submitted that in the Judgment, dated 16.10.2019, passed by the Learned Authority in the case titled '**Rameshwar vs. Ocus Skyscrapers Realty Limited**' being Complaint No. 3126 of 2019 (hereinafter referred to as the "said Judgment"), the Learned Authority had held as follows:

*"So that led to issuance of letter dated 18.07.2019 by the respondent to the complainant and vide which besides directing to clear the arrears due towards him, he has been offered possession of the allotted unit in the project known by the name of OCUS 24K situated in Sector 68, Gurugram. But instead of taking possession of the allotted unit on the basis of offer of possession, the complainant approached this forum for refund of the amount deposited with the respondent which is not maintainable"*

- vii. In view of the above, it is submitted that the said Judgment is applicable to the present case as the Complainant hereinabove and the Complainant in the said Judgment is similarly situated, therefore, the present Complaint deserves to be dismissed with a direction to the Complainant to pay the balance consideration amount and take the possession of the said Unit allotted to the Complainant within the stipulated period i.e. 3 months, failing which, the Respondent shall be entitled to proceed against the Complainant as per the terms of the Builder Buyer's Agreement.

viii. Further, the Complainant was also given an option to choose between the two options i.e., either "Self-Use" or "Management of the Unit" and *vide* Consent Form, dated 01.10.2018, the Complainant has opted for "Management of the Unit". Thus, as per the above consent of the Complainant the unit of the Complainant was changed from Unit No.1716 having an area of 701 sq. ft. to Unit No. 1916 having an area of 726 sq. ft., as the per the consent of the Complainant. The Complainant was sent a letter in this regard and the same has never been refuted or replied in negative by the Complainant as the above change in unit was as per the consent of the Complainant as well as Clause 10 of the said Agreement wherein the Respondent has the right to increase some area of the said Unit upon execution of the final layout plan. It is humbly submitted that the said Project of the Respondent is ready and operational since July, 2019 and all the amenities and facilities are being provided by the Respondent.

12. 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**

13. 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**

14. 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**

15. 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.

16. 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.

17. 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."*

18. 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 relief sought by the complainant**

**F. I. Direct the respondent to refund paid up amount along with interest at the prescribed rate.**

19. The complainant was allotted unit no. 1716, 17<sup>th</sup> floor, admeasuring 701 sq. ft. (super area) in the project "Ocus 24K" Sector 68" by the respondent-builder for a basic sale consideration of Rs. 66,94,550/- and she had paid a sum of Rs. 30,87,936/- which is approx. 46% of the basic sale consideration. A buyer's agreement dated 16.06.2014 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 16.06.2019. The Occupation Certificate for the project of the allotted unit is obtained on 17.07.2019.
20. The counsel for the complainant has drawn the attention of the authority towards the clause 1.6 of the builder buyer's agreement in the proceeding dated 12.07.2023, the unit of the complainant was unilaterally changed without consent of the complainant from unit no. 717 on 7<sup>th</sup> floor to 1814 on 18<sup>th</sup> floor. As per condition no. 1.6 of the BBA, the respondent was to refund the entire amount deposited along with interest @ 9% per annum in case of non-acceptance of the changed unit. Clause 1.6 of the BBA is reproduced hereunder:

*The Allottee(s) has/have examined the tentative building plans of the Complex on the Project Land and all other approvals and permissions and has satisfied himself/herself about the rights and authority of the*

*Company to construct the Complex and allot/sell/lease or transfer the ownership rights thereof in full or parts to third parties on such terms as they may deem fit and receive the consideration for the same. The Allottee(s) agrees and acknowledges that any change in the sanction of the building plan, from time to time and Allottee(s) acknowledges that in such an eventuality, the dimensions of the Said Unit allotted to the Allottee can change. If such changes are made due to re-sanctioning of the Plan, offer for alternative unit or **in case the Allottee is not satisfied with the same the Company shall have the authority to refund the amount received from the Allottee along with interest 9% per annum.** The Allottee(s) shall be informed about the said changes by a written notice at the address mentioned in this agreement.*

21. As per the aforesaid clause, the respondent was under an obligation to inform the allottee about the changes made in the building plan. Admittedly, there is nothing on record to corroborate that the respondent-builder had either intimated the allottee about the revision of building plan nor has sought the consent of the complainant-allottee for such revision in the building plan. The changes being unacceptable to the complainant allottee, the complainant has approached the authority seeking refund of the entire amount paid by him as the respondent illegally, arbitrary and unilaterally changed the allotted unit of the complainant. In view of the above facts and circumstances as well as the terms of the BBA, the authority is of the view that in such a situation where the promoter has failed to take consent of the complainant-allottee and the respondent has failed to abide by the terms and conditions of BBA, the complainant is entitled to refund of the paid-up amount besides interest as per clause 1.6 of the BBA.





22. Keeping in view the fact that the allottee-complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit along with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

23. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)** has observed as under:-

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount

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received by him in respect of the unit with interest at such rate as may be prescribed.

25. The authority hereby directs the respondent- promoter to return the amount received by it i.e., Rs. 30,87,936/- with interest at the rate of 10.75% (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 date of refund of the deposited amount.

#### **H. Directions of the authority**

26. 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 entire amount of Rs. 30,87,936/- paid by the complainant with interest at the rate of 10.75% (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 date of refund of the deposited 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.



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

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2023

**HARERA**  
**GURUGRAM**

