BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.510 of 2023

Date of Decision: January 15, 2025

Ocus Skyscrapers Realty Private Limited (formerly known as Ocus Skyscrapers Realty Ltd.), 6th Floor, Ocus Technopolis Building, Golf Course Road, Sector 54, Gurugram, Haryana-122001

Appellant.

Versus

Satish Kumar Chhabra, House No. 290, Sector 26, Noida, Uttar Pradesh

Respondent

Argued by: Mr. Shekhar Verma, Advocate with
Mr. Yashvir Singh Balhara, Advocate
for the appellant.

Mr. Mayank Sharma, Advocate
for the respondent.

CORAM:

Justice Rajan Gupta **Chairman**
Rakesh Manocha **Member (Technical)**

O R D E R:

RAJAN GUPTA, CHAIRMAN

The present appeal is directed against the order dated 09.03.2022 passed by the Authority[1]. Operative part of the order reads as under:

> *"1. The respondent is directed to hand over the physical possession of the shop at the allotment rate for pre revised super area of 473 sq. ft instead of 494.73 sq. ft. after receiving the remaining amount*

[1] Haryana Real Estate Regulatory Authority, Gurugram

due besides interest at the prescribed rate of 9.30% p.a. against that unit (473 sq. ft.) within 90 days.

ii) If either of the party fails to comply with the above mentioned directions within the stipulated period, then the allottee shall be refunded the amount deposited with the respondent builder after deduction of 10% of total sale consideration as per regulation of RERA".

2. The appellant (hereinafter described as 'the promoter') is aggrieved by the aforesaid order. It is contended that in view of judgement in Appeal No. 255 of 2019—**Ravinder Pal Singh v. M/s Emaar MGF Land Ltd. and another**, decided on 05.04.2021, the promoter is entitled to deduction of the dues such as GST etc. from the amount to be refunded to the respondent (hereinafter described as 'the allottee'). The Authority has failed to take this fact into account. Besides, the promoter is entitled to deduct 20% of the total sale consideration out of the amount to be refunded as provided in the agreed terms.

3. Learned counsel for the allottee has vehemently opposed the plea. As per him, the case of **Ravinder Pal Singh's** (supra) is not applicable as the same pertained to withdrawal from the agreement, however, instant is a case of cancellation of the unit. Relying upon the judgement in Appeal No. 279 of 2019—**Shakti Singh v. M/s Bestech India Ltd.**, decided on 18.08.2021, he states that deduction from the amount to be refunded cannot be more than 10%. Besides, the price of the shop has escalated and is more than rupees one crore at the moment.

4. Having heard rival contentions and given careful thought to the facts, we find that the allottee booked a commercial unit in the project named as "Ocus Medley", Sector 99, Gurugram for a total sale consideration of Rs.61,33,391/-. Out of this, an amount of Rs.30,43,468/- was remitted by him to the promoter (as per receipts annexed with the complaint from page 42 to 48). After a gap of about ten months, BBA[2] was executed between the parties on 14.08.2013. Stand of the allottee is that a clause was inserted in the agreement that 'sixty months' for grant of possession would commence from the date of execution of the agreement rather than the date of booking. As per him, he received a notice/demand from the promoter regarding arbitrary increase in the area and enhancement in price. The allottee thus asked the promoter to allot him a smaller unit but received no response. Vide communication dated 11.05.2020, the allottee received cancellation letter from the promoter regarding the unit in question. Thereafter, on 20.05.2020, he received an e-mail directing him to pay another amount of Rs.63,50,323/- over and above the paid up amount of Rs.31,16,659/-. The allottee thereafter tried to communicate with the promoter but his efforts proved futile. As a result, he was constrained to prefer instant complaint before the Authority.

5. On due consideration of the entire issue, we find no merit in the appeal. It is on record that present is not a case of withdrawal from the project but of cancellation of unit. Thus, judgment in **Ravinder Pal Singh's case (supra)** is not

[2] Builder Buyer Agreement

applicable to the instant case. The cancellation letter dated 11.05.2020 is already on record. The possibility that the allottee was not able to communicate much with the promoter after the cancellation, cannot be ruled out as the promoter is in a dominant position. Despite this, the Authority taking liberal view has allowed the promoter to deduct 10% of the total sale consideration from the amount to be refunded to the allottee. As per judgment in **Shakti Singh's case (supra)**, deduction cannot be allowed to be more than 10% as per the regulations. The allottee has also highlighted that by now the prices of the unit in question has escalated. However, this Bench refrains from expressing any opinion on this plea.

6. The appeal is without any merit and is hereby dismissed.

7. The amount of pre-deposit made by the promoter with this Tribunal in terms of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 along with interest accrued thereon, be remitted to the Authority to be disbursed to the respondent-allottee, subject to tax liability as per law.

8. Copy of the order be communicated to the parties/Authority for information.

9. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

January 15, 2025/mk