

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

**Appeal No.679 of 2023**

**Date of Decision: February 11, 2025**

Ocus Skyscrapers Realty Private Limited (formerly known as Ocus Skyscrapers Realty Ltd.), 6th Floor, Ocus Technopolis Building, Golf Course Road, Sector 54, Gurugram, Haryana122001

..Appellant

Versus

1. Richa Sharma
2. Usha Sharma both are resident of House No.P-6/1, DLF City, Phase 3, Gurugram

...Respondents

**CORAM:**     **Justice Rajan Gupta**                     **Chairman**  
                  **Shri Rakesh Manocha**                   **Member (Technical)**

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

Mr. Nitin Jaspal, Advocate  
for the respondents.

**:O R D E R:**

**RAJAN GUPTA, CHAIRMAN:**

Present appeal is directed against order dated 25.07.2023 passed by the Authority<sup>1</sup> at Gurugram. Operative part thereof reads as under:

*“i. The complainant-promoter is directed to refund the paid-up amount of Rs.17,27,508/- to the respondents-allottee after deducting 10% of the sale consideration of the unit by deducting the earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.75% p.a. as prescribed under rule 15 of the rules, 2017 from the date of filing of reply to the present complaint, i.e., 20.03.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.*

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<sup>1</sup> Haryana Real Estate Regulatory Authority at Gurugram

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

2. Brief factual matrix of the case is that the respondents were allotted a commercial unit measuring 311 sq. ft. in the project ‘Ocus 24K’ floated by the appellant (Ocus Skyscrapers Realty Pvt. Ltd.) in Sector 68, Gurugram. BBA<sup>2</sup> was executed between the parties on 13.12.2013. Total sale consideration of the unit was Rs.34,51,788/-, admittedly, out of which, an amount of Rs.17,27,508/- was remitted by the allottees as per statement of account dated 18.07.2019. OC<sup>3</sup> was granted to the appellant-promoter on 17.07.2019 and it promptly made the offer of possession thereafter on 18.07.2019.

3. Stand of the appellant is that the respondents-allottees defaulted in making payment, as a result of which, appellant-promoter filed the instant complaint before the Authority below seeking a direction to the allottees to take possession after making the balance payment. The appellant-promoter, however, issued pre-cancellation letter on 28.09.2020.

4. Stand of the respondents is that some delay in payment was occasioned due to the reasons beyond the control of the respondents-allottees and physical ailment of Usha Sharma (respondent No.2 herein) for which she had to undergo surgery in Medanta Hospital.

5. This apart, stand of the respondents is that appellant-promoter miserably failed to handover the possession within stipulated time frame. In view of inordinate delay, it was incumbent upon the appellant-promoter to refund the entire consideration amount to the respondent along with interest. The

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<sup>2</sup> Builder Buyers Agreement

<sup>3</sup> Occupation Certificate

Authority below after giving due consideration to rival contentions of the parties came to the conclusion that appellant-promoter was liable to refund the amount remitted by the allottee, i.e., Rs.17,27,508/-. However, it allowed 10% deduction from the sale consideration of the unit and awarded interest @10.75% from the date of filing of the complaint, i.e., 20.03.2020 till the actual date of refund.

6. One of the pleas of the appellant-promoter is that the respondents-allottees paid only 3 instalments from 2013-15, thereafter, no payment was made. Thus, the interest on the amount to be refunded has been erroneously granted by the Authority.

7. We have considered the aforesaid plea. The delay on the part of the allottee in depositing instalments has been considered by the Authority and probably due to this reason, right to get the interest has been granted from the date of the filing of the complaint and not any date prior to that. This restriction takes into account the delay on part of the allottee. This apart, promoter has also been allowed to deduct 10% from the sale consideration of the amount to be refunded.

8. In our considered view, there is no legal infirmity with the order passed by the Authority. Respondents-allottees have suffered long enough. Even the initial amount deposited by them has not been refunded to them till now.

9. We, thus, find no force in the plea that the respondents-allottees are not entitled for interest as awarded by the Authority below.

10. Appeal is without any merit and same is hereby dismissed.

11. The amount deposited by the appellant-promoter with this appeal as pre-deposit in terms of proviso to Section 43(5) of

the RERA Act<sup>4</sup>, along with interest accrued thereon, be remitted to the learned Authority for disbursement to the respondents-allottees, subject to tax liability, if any, according to law.

12. Copy of this order be forwarded to parties, their counsel and HRERA, Gurugram.

13. File be consigned to the records.

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal

Rakesh Manocha  
Member (Technical)

Announced:  
February 11, 2025  
Manoj Rana

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<sup>4</sup> Real Estate (Regulation and Development) Act, 2016