

Complaint No. 3119 of 2023

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

Complaint no.: 3119 of 2023
Date of filing: 26.07.2023
Order pronounced on: 30.05.2025

1. Rohit Kapur
2. Shivani Kapur

Both R/o: - G-355A, Florence Villa, Sushant Lok-2,
Sector-57, Gurugram, Haryana-122001.

Complainants

Versus

M/s Parkash Infrastructure and Developers Limited
Regd. Office at: - Plot No. C-94, First Floor, Shivalik,
New Delhi, South Delhi, Delhi-110017.

Respondent

CORAM:

Shri Vijay Kumar Goyal

APPEARANCE:

Ms. Simran Bajaj and Shri Rohan Suhag (Advocates)

None

Member

Complainants
Respondent

EX-PARTE ORDER

1. This complaint has been filed by the complainant/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. 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:

S.no.	Particulars	Details
1.	Name of the project	"Ocus Technopolis 2", at Sector-51, Gurugram.
2.	Project area	2.432 Acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	117 of 2008 dated 04.06.2008 Valid upto 03.06.2016
5.	Name of licensee	Parkash Infrastructure & Developers Limited
6.	RERA Registered	Un-registered
7.	Provisional Allotment letter (In favor of Mr. Sukhvinder Mehta)	28.09.2010 (page no.39 of complaint)
8.	Unit no.	914, on 9 th floor, Office space, (page no.50 of complaint)
9.	Unit area	464 sq. ft. (super area) (page no.50 of complaint)
10.	Revised area (Increased by 122 sq. ft. i.e., 26.29%)	586 sq. ft. (super area) (as mentioned in SOA annexed with offer of possession letter dated 21.04.2015)
11.	Buyer's agreement (With original allottee i.e., Sukhvinder Kaur)	06.07.2011 (page no.47 of complaint)
12.	Endorsement (in Favor of complainants)	30.03.2012 (page no.45 of complaint)



13.	Possession clause	14. That the possession of the said premises is proposed to be delivered by the developer to the allottee(s) within three years from the date of this agreement... (Emphasis Supplied) (page no.54 of complaint)
14.	Due date of possession	06.07.2014 (Note: the due date is calculated three years from the date of execution of buyer's agreement)
15.	Total sale consideration [BSP + IFMS + EDC-IDC + Fixture & Fittings]	Rs.34,47,520/- (for super area-464 sq. ft.) (page no.50 of complaint)
16.	Amount paid	Rs.29,64,349/- (As mentioned in SOA annexed with offer of possession dated 21.04.2015, issued by respondent, provided by the complainant during the proceedings dated 30.05.2025.)
17.	Occupation certificate	Not Known
18.	Offer of possession	21.04.2015 (page no.79 of complaint)
19.	Requests for refund	16.03.2013, 03.09.2013, 01.05.2014, 10.05.2015 & 01.08.2017 (page no.76-78, 80-82 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. The original allottees, namely, Mr. Sukhvinder Mehta while searching for office shop were lured by the advertisements/brochures/sales representatives of the company to buy an office space in their project



namely "OCUS TECHNOPOLIS 2" of M/s Parkash Infrastructure and Developers Limited at Sector 51, Gurugram Haryana.

- b. That Original Allottee Mr. Sukhvinder Mehta confirmed the booking of an office space bearing unit No. 914, in OCUS TECHNOPOLIS 2, Sector 51, Gurugram, Haryana having a super area 464 sq. ft. (which was later increased by the respondent to 586 sq. ft.)
- c. That the flat buyer's agreement dated 06.06.2011 was executed between the respondent and the original allottee which provides a total sale consideration of Rs.34,47,520/- and a sum of Rs.17,55,892/- has been paid by the original allottee to the developer till 29.02.2012.
- d. That original allottee vide endorsement dated 30.03.2012, endorsed the said unit no.914 in favour of the complainant. Thereafter the complainant made the payment of the amount of Rs.2,50,000/- and Rs.47,048/- vide receipt number OT20039/7/2763 dated 09.05.2012. and vide receipt No. OT20039/7/2762 respectively.
- e. Thereafter the complainant has paid an amount of Rs.1,50,000 vide receipt no. OT20039/8/3335 dated 10.09.2012 and an amount of Rs.1,25,000/- and Rs.44,048/- vide receipt number OT20039/8/3336 dated 11.09.2012 and vide receipt No. OT20039/8/3337 respectively.
- f. The complainant realized that neither the construction was proceedings as per the construction linked plan provided at the time of booking, nor was there any positive response on the exact date of delivery for which the complainant also wrote a mail to the respondent requesting for updating him about the progress in the construction of the aforesaid unit. In response to which the complainant did not get any response from the side of respondent.

- g. The offer of possession was made on 21.04.2015 whereas the same was due on 06.06.2014 as per the buyer's agreement clause no. 14 of the buyer's agreement, with no mention of the OC having been received. The offer of possession also contained an Annexure wherein the area was increased from an originally booked area of 464 sq. ft. to 586 sq. ft. resulting in, increase in cost from Rs.34,47,520/- to Rs.49,06,295/-.
- h. A copy of letter dated 16.03.2013 clearly states that the complainant has made repeated calls and visits to the respondent office regarding the halt/ nonprogress in the construction of the unit and requesting to refund the amount back to the complainant.
- i. In a copy of Letter dated 03.09.2013, the complainant asked the developer to take back the requested unit and then to refund the entire amount paid by the complainant.
- j. On a copy of letter dated 01.05.2014 and dated 10.05.2015, the complaint clearly states that, even on Repeated phone calls and visits were made to the Respondent regarding the refund of the amount as the complainant was not willing to take the possession of the unit and was not in condition to deposit the further payment.
- k. The complainant was passing through mental agony, physical torture, emotional pain to self and the family on account of non-delivery and hence insisted on a refund of the amount.
- l. A copy of the letter dated 15.02.2016 asking for the refund of the amount since the complainant was not in the condition to deposit further amount as he was in need of money because of poor financial conditions and surrender the said unit No. 914 in Ocus Technopolis 2.

- m. A copy of the letter dated 01.08.2017 asking for the refund of the amount since the complainant was in need of the money and the complainant is not in the condition to deposit a y further amount.
- n. That the complainant had then sent a detailed mail on 21.09.2020 requesting to buy back the unit which means indirectly asked for refund based on the financial condition of the allottee but no response.

C. Relief sought by the complainant: -

- 4. The complainants have sought following relief(s)
 - a. Restrain the respondent from creating any third-party rights in the said property till the time the entire amount along with interest is refunded.
 - b. Restrain the respondent from cancelling the allotment till the time the entire amount along with interest is refunded.
 - c. To order the respondent to refund the entire amount of Rs.29,64,349/- paid by the complainants along with the prescribed rate of interest being MCLR + 2% p.a.
 - d. To order the respondent not to deduct any amount from the entire amount payable to the complainant with interest.
 - e. To pass any other interim relief(s) which this Authority thinks fit in the interest of justice and in favor of the complainant.
- 5. The present complaint was filed on 26.07.2023 and registered as complaint no.3119 of 2023. As per the registry, complainants sent copies of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant at page no. 92 to 95 of the complaint. The proof regarding the delivery of the complaint along with annexures made to the respondent, has been submitted by the complainants as available in the file. The registry of the

authority sent a notice with a copy of the complaint along with annexures through speed post on 19.08.2023 bearing tracking no. EH372946658IN and Registry has also sent the notice along with a copy of the complaint through email dated 18.08.2023 and the mail was bounced back.

6. The Authority before proceeding ex-parte against the respondents vide order dated 30.05.2025, issued direction with regard to issuance of notice by way of substituted service in the daily newspaper. But despite service of notice through the newspapers i.e., "Dainik Jagran" (Hindi) and "The Times of India" (English), the respondent failed to appear and to submit any reply till date and therefore, the Authority is left with no other option but to proceed ex-parte against the respondent.
7. 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 based on these undisputed documents and submission made by the complainants.

D. Jurisdiction of the Authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

9. 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.

D. II Subject matter jurisdiction

10. 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.

11. 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 complainants at a later stage.
12. 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. 2021-22(1) RCR(C), 357 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."

13. 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.

E. Findings on the relief sought by the complainants

- E.I** Direct the respondent to refund the entire amount of Rs.29,64,349/- paid by the complainants along with the prescribed rate of interest being MCLR + 2% p.a.
- E.II** Direct the respondent not to deduct any amount from the entire amount payable to the complainant with interest.
- E.III** Restrain the respondent from creating any third-party rights in the said property till the time the entire amount along with interest is refunded.
- E.IV** Restrain the respondent from cancelling the allotment till the time the entire amount along with interest is refunded.
- E.V** To pass any other interim relief(s) which this Authority thinks fit in the interest of justice and in favor of the complainant.

14. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. In the present complaint, the original allottee (Mr. Sukhvinder Mehta) was allotted a unit bearing no.914, on 9th Floor (Office Space) vide provisional allotment letter dated 28.09.2010 and subsequently via buyer's agreement dated 06.07.2011 and thereafter, the original allottee sold the subject unit to the first subsequent allottees being the complainants and the same was endorsed in favor of the complainants vide endorsement dated 30.03.2012. Therefore, the complainants stepped into the shoes of original allottee on 30.03.2012. The complainants claiming refund of the entire paid-up amount along with interest, as per provisions of the Act of 2016.
16. Upon consideration of the documents available on record and submissions made by the complainant, the Authority observes that, in the present complaint, the original allottee i.e., Mr. Sukhvinder Mehta booked a unit/ office space in the project "Ocus Technopolis 2" and was allotted a unit/ office space bearing no. 914 on 9th floor having admeasuring super area 464 sq. ft. vide a provisional allotment letter dated 28.09.2010 Thereafter, a buyer's agreement was executed on 06.07.2011 between the respondent and original allottee for a total sale consideration of Rs.34,47,520/- (which includes BSP, IFMS, EDC, IDC, Fixture and Fittings) against which respondent has received an amount of Rs.29,64,349/-. As per clause 14 of the said agreement the respondent was obligated to deliver the possession of the unit within 3 years from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 06.07.2014. Thereafter, the Original allottee (i.e., Mr. Sukhvinder Kaur) made a request

to respondent for assignment of unit in favor of complainants, upon which on 30.03.2012, the unit/ office space was endorsed in favor of the present complainants (i.e., Mr. Rohit Kapur and Ms. Shivani Kapur). Therefore, the complainants stepped into the shoes of original allottee on 30.03.2012. Thereafter, on 21.04.2015, an offer of possession was received by the complainants in which the super area of unit was increased from 464 sq. ft. to 586 sq. ft. (Increased by 122 sq. ft. i.e., 26.29%).

17. It is further observed by the Authority that the complainants have placed an letter dated 16.03.2013 at page 76 of the complaint, wherein the present complainants made a request to the respondent for refund along with interest, as the complainants do not wish to continue with the respondent and pursuant to which several reminders were also submitted to the respondent for refund through letter dated 03.09.2013, 01.05.2014, 10.05.2015, 15.02.2016 and 01.08.2017, and through email dated 07.09.2020 and 21.09.2020 and through what's app to the representative of the respondent. Therefore, the complainants have sought refund of the paid-up amount with interest before the due date of possession. Thus, the refund can only be allowed after deduction of earnest money.
18. The Authority observes that the as per clause 8 of the buyer's agreement dated 06.07.2011 talks about the cancellation by allottee and the same is reproduced here below:

"... The payments made by the Allottee(s) shall be refunded in the same manner as set out in this clause notwithstanding the fact that the allottee(s) may himself voluntarily request for cancellation of his allotment. In such event voluntary cancellation also, the earnest money shall be liable to be forfeited and refund, if any amount be made as set out in this clause."

19. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases 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*, and wherein it was 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 damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017* in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as 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."

20. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/ promoter is directed to refund the paid-up amount of Rs.29,64,349/- received by it from the complainants, after deduction of 10% of sale consideration, being earnest money, and return the reaming amount along with interest on such balance amount at the rate of 11.10% per annum (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 request for surrender (i.e., 16.03.2013) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the Authority

21. 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 of Rs.29,64,349/- received by it from the complainants, after deduction of 10% of sale consideration, being earnest money, along with interest on such balance amount at the rate of 11.10% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of request

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for surrender (i.e., 16.03.2013) till the actual 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.
 - iii. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants.
22. The complaint stand disposed of.
23. Files be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.05.2025

HARERA
GURUGRAM