

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.76 of 2024

Date of Decision: August 02,2025

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

Appellant.

Versus

Santdas Gurmukhdas Wadhwani, C-39/A3, LGF Ardee City, Gurgaon.

Respondent

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Shekhar Verma, Advocate with
Mr. Yashvir Singh Balhara, Advocate for the
appellant.
Ms. Pooja Sareen Nain, Advocate for the
respondent.

RAJAN GUPTA, CHAIRMAN

The present appeal is directed against the order dated 04.10.2023, passed by the Authority¹. Operative part of the order reads as under:

“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/builder is directed to refund the paid-up amount of Rs.52,77,334/- after deducting 10% of the basic sale consideration of Rs.98,98,260/- being earnest money along with an interest @ 10.75% p.a. on the refundable amount, from the date of surrender i.e. 09.08.2019 till its realization.

¹ Haryana Real Estate Regulatory Authority, Gurugram

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. Complaint stands disposed of.

28. File be consigned to the registry.”

2. Learned counsel for the appellant-promoter states that after completion of project, the promoter got Occupation Certificate on 17.07.2019. On the basis of same, it offered possession to the allottee on 23.07.2019. The allottee decided to surrender the unit thereafter on 09.08.2019 thus, no liability can be fastened on the promoter.

3. Learned counsel for the respondent defends the impugned order.

4. We have heard learned counsel for the parties and given careful thought to the facts of the case.

5. It is evident that the allottee applied for a unit in the project- Ocus 24K, Sector 68, Gurugram licence for which was granted on 01.08.2012 to be valid till 31.07.2020. BBA² was executed between the parties on 18.04.2014. According to agreement, due date of possession was 18.04.2019. Occupation Certificate was granted to the promoter on 17.07.2019. Total consideration of the unit was Rs.1,10,32,560/-. Out of this, the allottee has remitted an amount of Rs.52,77,334/-. Subsequently, an offer of possession was given to him on 23.07.2019. It is thereafter that the allottee issued a legal notice to the promoter expressing his wish to surrender the unit in question. The same is dated 09.08.2019.

6. It appears that the promoter had completed the project and got Occupation Certificate on 17.07.2019 and on the basis thereof, it offered possession on 23.07.2019. Thus, it appears to be

² Builder Buyer's Agreement

a valid offer of possession. At the same time, it is well-settled that the allottee cannot be forced to take possession of the unit in question. As the allottee decided to surrender the unit vide notice dated 09.08.2019, the promoter ought to have refunded the amount forthwith. However, at this stage, the promoter did not act promptly due to which the allottee was constrained to file the instant complaint before the Authority.

7. The promoter was granted Occupation Certificate on 17.07.2019 and made offer of possession on 23.07.2019. The allottee decided to withdraw from the project and surrendered the unit vide notice dated 09.08.2019. Thus, after examining the entire issue, the Authority directed refund of the paid-up amount along with interest from date of surrender till realization after deducting 10% of the basic sale consideration.

8. We find no infirmity with the order. Interest was also awarded @10.75% from the date of surrender till realisation. We deem it fit to keep the same intact.

9. The judgment in **Godrej Projects Development Limited v. Anil Karlekar and others**³, relied upon by counsel for the appellant is not applicable to the facts of the instant case. In that case, Hon'ble Supreme Court held that as cancellation was at the buyer's discretion and not due to any delay by the builder, the promoter was directed to refund the amount without interest after deducting 10% of the basic sale price, whereas in the instant appeal, allottee has surrendered the unit after obtaining valid offer of possession, however, promoter did not act promptly in refunding the amount forthwith when the allottee decided to withdraw from the project.

10. In view of the above, the appeal is dismissed.

³ Civil Appeal No. 3334 of 2023, decided on 03.02.2025

11. The amount of pre-deposit made by the promoter in terms of proviso to Section 43(5) of the Act along with interest accrued thereon, be remitted to the Authority for disbursement to the allottee, subject to tax liability, if any.

12. Copy of the order be forwarded to the parties/counsel and the Authority.

13. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

August 02,2025
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