

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: July 10,2026

Appeal No. 707 of 2023

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

... Appellant-promoter

Versus

Payal Bhatia Chopra R/o B-73, Sector 55, Noida-201301

... Respondent-allottee

Appeal No. 706 of 2023

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

... Appellant-promoter

Versus

Sachin Kapoor R/o B-8, Old Survey Road, Dehradun.

... Respondent-allottee

CORAM:

Justice Rajan Gupta
Mr. Dinesh Singh Chauhan

Chairman
Member (Technical)

Present:

Mr. Harpreet Singh Arora, Advocate,
for the allottees.

Mr. Lokesh Bhola, Advocate with
Mr. Yashvir Singh Balhara, Advocate,
for the promoter.

ORDER:

RAJAN GUPTA, CHAIRMAN

This order shall dispose of above-mentioned appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 707 of 2023.

2. Present appeal is directed against the order dated 23.08.2023, passed by the Authority¹. The operative part thereof reads as follows:

“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.”*

3. Factual matrix of the case is that the respondent-allottee was allotted a unit no. 1716, measuring 701 sq. ft. on the 17th Floor of the commercial project namely ‘Ocus 24K’ in Sector-68, Gurugram, under a construction-linked payment plan. Total sale consideration of the unit was Rs. 66,94,550/-, out of which respondent-allottee had paid Rs. 30,87,936/-. Buyer-Builder Agreement (BBA) was executed between the parties on 16.06.2014.

4. As per the agreement, the due date of possession was 16.06.2019, subject to force majeure and compliances by the allottee. Occupation Certificate to the project was granted on 17.07.2019 and an offer of possession was made to the allottee on 23.07.2019 for revised unit No. 1916 on 19th floor measuring 726 sq. ft. Thus, allottee approached the Authority by filing a complaint in the year 2021, alleging that construction was not carried out in accordance with the promised

¹ Haryana Real Estate Regulatory Authority, Gurugram

pace and thus, sought refund of entire paid-up amount along with interest.

5. Stand of the promoter before the Authority was that the project was completed on time and possession had been offered within the stipulated time after grant of occupation certificate. It further asserted that there was default on the part of the allottee to pay the balance dues, therefore, it opposed the refund beyond what it considered permissible under the agreement.

6. Upon hearing both the parties and perusal of the record, the Authority issued the directions vide order dated 23.08.2023 already reproduced in para 1 of this order.

7. Aggrieved thereby, appellant-promoter has filed the present appeal before this Tribunal, raising various contentions. The promoter primarily assailed the order on the ground that the Authority erred in granting interest to the allottee despite alleged defaults on her part, and further erred in granting refund without any deduction as the unit has already been offered after the receipt of Occupation Certificate.

8. On the other hand, learned counsel for the respondent-allottee contended that the unit originally allotted to the allottee was unilaterally changed by the promoter at the stage of offer of possession. It was further submitted that the construction was not completed within the promised timeline, therefore, Authority has rightly passed the impugned order directing refund of entire deposited amount without any deduction, along with interest from the respective dates of payment. Per contra, learned counsel for the appellant-promoter submitted that the unit allotted to the allottee was only tentative in terms of the agreement and was expressly subject to change.

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

10. It is not in dispute that the due date for delivery of possession was 16.06.2019, whereas the occupation certificate to the project was granted on 17.07.2019 and offer of possession was thereafter issued on 23.07.2019. Thus, the promoter cannot be said to have failed in completing the project within reasonable time, particularly when the offer of possession was issued immediately after receipt of the occupation certificate, and the project stood substantially completed in terms of contractual obligation without undue delay.

11. It also stands established from the record that the allottee neither cleared the balance dues nor came forward to take possession after the offer was made to her. Instead, she chose to surrender the unit and seek refund of the amount deposited by her. In such circumstances, the allottee cannot insist upon full refund with interest from the date of each payment as if the project had remained incomplete or possession had never been offered. The relief granted by the Authority, therefore, requires modification to balance the equities between the parties.

12. In light of facts of the present case, where the promoter had already completed the project, granted occupation certificate, and offered possession, it would be just and proper to allow refund after deduction of 10% of the basic sale consideration towards earnest money. The said deduction is reasonable and is in consonance with the settled approach adopted in similar matters. Further, the refundable amount shall carry interest at the prescribed rate from the date of surrender of the unit i.e., the date of filing of complaint on 11.02.2021 till actual realization.

13. The appeals are thus disposed of in the above terms. The impugned orders stand modified accordingly.

14. The amount deposited by the promoter with this Tribunal along with accrued interest, in order to comply with the provisions of Section 43(5) of the Act be remitted to the Haryana Real Estate Regulatory Authority, Gurugram for disbursement to the parties as per their entitlement in accordance with law and Rules.

15. Copy of the order be sent to the parties/their counsel and the Authority for compliance.

16. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

July 10, 2026/mk