

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

Complaint no. : 3105 of 2020
First date of hearing : 10.12.2020
Date of decision : 03.02.2021

1. Alka Jain
2. Raj Kumar Jain
Address: A 603 Unique Apartments,
Plot No. 38 Sector 6, Dwarka, New Delhi

Complainants

Versus

1. Ocus skycrapers realty ltd.
Address: C-94, First Floor, Shivalik,
New Delhi- 110017
2. Perfect Constech Private Limited
Address: A-307 Ansal Chamber 1, 3 Bhikaji
Cama Place New Delhi

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

Chairman
Member

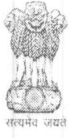
APPEARANCE:

Complainant in person
Ms. Aarti Mehto

Advocate for the Complainants
Advocate for the Respondents

ORDER

1. The present complaint dated 12.10.2020 has been filed by the complainants/allottees 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 there under or to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.No. | Heads | Information |
|-------|--|---|
| 1. | Project name and location | "OCUS 24K", Sector-68 |
| 2. | Project area | 4.44 acres |
| 3. | Nature of the project | Commercial Complex |
| 4. | DTCP license no. and validity status | 76 of 2012 dated 01.08.2012 valid upto 31.07.2020 |
| 5. | Name of licensee | Perfect Constech Pvt. Ltd. |
| 6. | RERA Registered/ not registered | Registered no. 220 of 2017 dated 18.09.2017 valid upto 17.09.2022 |
| 7. | Date of booking | 20.07.2013 |
| 8. | Unit no. | 1209, 12 th floor |
| 9. | Final unit no. (as per letter dated 07.02.2020, page 83 of the complaint) | 1509 |
| 10. | Unit measuring | 685 sq. ft. (previous area) 677 sq. ft. (final super area) |



| | | |
|-----|--|---|
| | | (Page 83 of the complaint) |
| 11. | Date of execution of Flat Buyers Agreement | 07.03.2014 (page 34 of the complaint) |
| 12. | Payment plan | Construction linked payment plan |
| 13. | Total Sale consideration | Rs. 63,42,561/- (as per final statement of account dated 02.03.2020, page 86 of complaint) |
| 14. | Total amount paid by the complainant | Rs. 71,19,421/- (as per final statement of account dated 02.03.2020, page 88 of complaint) |
| 15. | Due date of delivery of Possession Clause: 11 (a) - 60 months from the date of this agreement. Clause 14 - 6 months grace period from the date of expiry of said 60 months and receiving occupation certificate of the said complex and the allottee not being in default of the terms and conditions set out in the application/agreement. | 07.09.2019 |
| 16. | Possession offered on | 23.07.2019 (page 70 of the complaint) |
| 17. | Delay in handing over possession till the date of this order | No delay |
| 18. | Occupation Certificate | 17.07.2019 |

3. As per clause 11(a) of the Agreement dated 07.03.2014 the possession was to be delivered within a period of 60 months



from the date of this agreement plus 6 months grace period which comes out to be 07.09.2019. Clause 11(a) of the Buyers Agreement is reproduced below:

11 (a) **Schedule for possession of the said unit**

The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said Building/said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company.....

14 Failure to deliver possession: Remedy

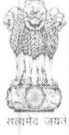
Subject to the terms and conditions of the agreement in case of any delay(except for force majeure clause 44 and conditions as mentioned in clause 11(b) and 11 (c) by the company in completion of construction of the said unit beyond 6 months from date of expiry of the said 60 months and receiving occupation certificate of the said complex and the Allottee(s) not being in default of the terms and condition set out in the application/agreement.....

4. The complainants submitted that the the Respondents had approached the Complainants, in July 2013, through their Broker Mr. Puneet Girdhar to get the booking for the said Property in Respondents' Project "OCUS 24K". That



Respondent no. 1 had taken a Cheque, for Booking, on 19.07.2013, for an amount of Rs. 4,79,165/- and after collecting the payments, forced the Complainants to sign on the 'Blank Application Form', on 20.07.2013, in a pre-printed document, for Allotment of the said Property. The copy of the said duly filled up and signed 'Blank Application Form' was never handed over to the Complainants.

5. That the Complainants have paid Rs. 71,19,421/- (Rs. Seventy-One Lakh Nineteen Thousand Four Hundred Twenty-One only) to the Respondents, till 31.08.2019, duly accepted by the Respondents and the receipts were issued by them, accordingly. That the Respondents have taken more amounts, than the cost of the Property, on record. This Fact is to their knowledge, but they do not wish to refund the same. the Respondents were continuously and intentionally harassing the Complainants, from the date of signing of the Agreement when they forced the Complainants to sign the BA, with worst condition of the Earnest Money of 20% of the Property cost, the completion period to be of 66 months and such other conditions.
6. That the Respondents had committed FRAUD while issuing two dubious letters on 23.07.2019, one in the name of 'Offer of Possession', luring Complainants, with a commitment that "*We would require approximately 30 Days after clearing*



outstanding dues to hand over the Keys and to fulfil possession formalities" and the second in the name of "Opportunity for Lease of Apartment". Respondents had also issued the third letter dated 23.07.2020, informing the Complainants of the reduction in the Super Bult up area of the Property from 685 Sq. ft. to 677 Sq. ft. The Respondents are playing a dirty trick of neither processing the Registration formalities nor handing over the Possession of the said Property though committed to complete the process within 30 days of the on receipt of full payment, as defined in their demand Letter as defined in Annexure iii of their letter dated 23.07.2019. That the Respondents confirmed that the said Property would be registered, only after the Complainants would shift to the Lease option. That the Respondents threatened that the Complainants would be charged Holding Charges, Maintenance Charges, and the Interest Factor, apart from withdrawal of the discount, if the Complainants refused to be the part of the Lease offer. That thereafter the Complainants had no option but to sign on the 'Blank Form, for the Lease Option', in the said meeting, the copy of which is not yet provided to the Complainants. That the Complainants asked the Respondents to process the *Registration and the Possession Letter* be released, for the Complainants to get the possession of the said Property. That the Respondents are not agreeing to



hand over the possession of the said Property, yet. Hence, this complaint inter-alia for the following reliefs:

- i. To pay the Complainants, Penal Interest, towards the delayed delivery of the said Property, for not handing over the Possession of the said Property and for not registering the said Property, as yet, on the total paid amount of Rs. 71,19,421/-.
 - ii. To refund back extra charged amounts towards EDC/ IDC of Rs. 4,400/-, towards PLC: Rs. 4,012/- and towards TDS, 1% of the actual cost of the said Property of Rs. 71,200/-, which the Respondent had, succinctly, taken from the Complainants (which has to be deposited towards the TDS), totaling to Rs. 79,412/-, along with the due interest, towards the cost of Money, as per Authority's guidelines.
7. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
8. The respondent contented the complaint on the following grounds:-
- i. The respondent submitted that the present complaint filed by the complainant contains various frivolous and



baseless allegation against the respondent no.1. This complaint is an abuse of the process of law and deserves to be dismissed with exemplary costs.

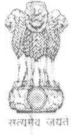
- ii. It is submitted that clause 11 (a) of the buyers agreement clearly stipulates that subject to all just exceptions the construction of the said project would be complete within a period of 60 months from the date of the bytes agreement. A further grace period of 6 months is also provided to the respondent for completion of the said project under clause 14 of the buyers agreement. In the present case the possession of the said unit was offered to the complainants by the respondent no. 1 on 23.07.2019 i.e. Within the stipulated period of 66 months, as per the terms of the buyers agreement. Therefore the complainant cannot claim that possession of the said unit has not been handed over to them. Offer of possession letter dated 23.07.2019 clearly states that after the clearance of the outstanding dues the respondent number one would hand over the keys of the said unit to the complainants within a period of approximately 30 days. Therefore, upon receiving the offer of possession letter dated 23.07.2019, it is the responsibility of the complainants approach the office of the respondent in order to complete the position



formalities. However, in the present case the complainants never approached the respondent no. 1 in order to complete the said formalities and the complainants are now alleging that it is the respondent no. 1 who is refusing to hand over possession of the said unit.

iii. It is further submitted that complainants have hereby admitted that possession with respect to the said unit was in fact offer to them on 23.07.2019. Therefor the complainant cannot claim that the respondent no. 1 has refused to hand over the possession of the said unit to them. As per the clause 13 of the buyers agreement clearly provides that if the complainants fail to take possession of the said unit within the time prescribed by the respondent no. 1 then in that case the said unit shall be at risk and cost of the complainants and the respondent no. 1 shall have no liability or concern thereof.

9. The complainants have filed the Rejoinder on **02.02.2021**. The complainants submitted that the Rejoinder of the respondent no. 1 as mailed in the evening of 27.01.2020 is totally misconceived, meritless and vexation the respondents hands are not clean while submitting the written statement before the honourable court. That the Rejoinder is nothing but



just a dilly-dallying tactics, being adopted by the respondent no. 1 in order to deny the complainants to rightful claim and allegation are just misplaced attempts to justify of their misdoing. That the said written statement is liable to be dismissed subject to heavy cost to be imposed on the respondents.

10. It is further submitted that the respondent is hiding the facts that their broker Mr Puneet Girdhar had approached for booking of the said unit. That respondent had cunningly taken a check for booking as above and thereafter desired that the complainants to reach their office on 20.07.2013 to sign on the application form. While the complainant reached their office on 20.07.2013 they took the complainants signature on a pre-printed blank application for allotment for the said unit.
11. The Complainants submitted that legal notice through the advocate the complainants had provided another opportunity to the respondents to handover the physical possession of the said unit and to get the refund of the extra charge amount vide complainants letter dated 06.09.2020. The complainants sought full refund of the paid amount along with the interest 15% from the respective payment date in the event if the respondent were not in a position to handover the unit to the complainants part of which is reproduced as follow:- in case the said studio apartment is not possible to be handed over to



us by you kindly refund back are full paid amount of rupees 71,29,421/- along with the due interest 15% p.a. from the respective dates on which these were received by Ocus skyscrapers reality till the full payments are received by us.

12. Copies of all the relevant documents have been filled and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
13. The Authority, on the basis of information and other submission made and the document filed by the complainants and the respondent, is of considered view that there is no need of further hearing in the complaint.
14. By virtue of Flat Buyer Agreement executed between the parties on 07.03.2014, the possession of the unit was to be handed over to the complainant within a period of 60 months plus 6 months as grace period which comes out to be 07.09.2019. Whereas possession has already been offered on 23.07.2019 but the allottee has failed to take over the possession. He did not submit any proof that he approaches the promoter for taking possession although he has completed all prerequisite formalities for taking over possession. The promoter is hereby directed to hand over the physical possession of the unit to the complainants within 7 days. During this intervening period there seems to be a dispute



whether the promoter has failed to give possession or allottee has failed to takeover possession, in these circumstances the promoter will not charge any holding charges.

15. Accordingly, non-compliance of the mandate contained in section 19(10) of the Act on the part of the complainants are established. Section 19(10) of the RERA Act is reproduce below:-

19. Rights and duties of allottees.-

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

In the present case there is no delay on the part of the respondent. As the due date of possession as per BBA is 07.09.2019 and the possession was offered on 23.07.2019 i.e. before the due date of possession. As such complainants are not entitled to delayed possession charges.

20. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

(i) Possession has already been offered on 23.07.2019 but the allottee has failed to take over the possession. He did not submit any proof that he approaches the promoter for



taking possession although he has completed all pre-requisite formalities for taking over possession.

(ii) The promoter is hereby directed to hand over the physical possession of the unit to the complainants within 7 days.

(iii) There seems to be a dispute whether the promoter has failed to give possession or allottee has failed to take over possession, in these circumstances, the promoter will not charge any holding charges.

21. Complaint stands disposed of.

22. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Dr. K.K. Khandelwal)

Chairman

Dated:03.02.2021

Judgement Uploaded on 09-04-2021