

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 5909 of 2019

Date of decision : 31.08.2021

SATYA PAL MALIK
R/O : 3 S/304, Gurjinder Vihar,
WHO Township, Greater Noida
U.P- 201310

Complainant

Versus

OCUS SKY SCRAPERS REALITY LTD.
ADDRESS: C-94, First Floor, Shivalik,
New Delhi-110017

Respondent

APPEARANCE:

For Complainant: Mr Munish Malik (Adv)

For Respondent: Mr. Arun Panwar (Adv)

ORDER

1. This is a complaint filed by Sh. Satya Pal Malik (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development)



Rules, 2017 (in short, the Rules) against respondent/promoter.

2. As per complainant, he booked a service apartment in respondent's project **Ocus 24 K**, situated at sector-68, Gurugram, on 10.08.2013. The respondent allotted a unit no. 609 admeasuring 685 sq. ft. for a total consideration of Rs 65,72,575 including BSP, EDC, IDC etc. A builder buyer's agreement (BBA) dated 17.02.2014 was executed between them, incorporating respective obligations in respect of said unit.
3. As per Clause 11 (a) and clause 14 of BBA, possession of the unit was proposed to be delivered within 60 months from the date of execution of buyer's agreement, unless there shall be delay or failure due to government department or due to any circumstances, beyond the power and control of the company, with 6 months grace period. In this way, possession of allotted unit, ought to have been by 17.08.2019 but respondent failed to deliver the possession of the said unit till date.
4. The respondent unilaterally changed the originally allotted unit and allotted a different unit i.e. unit No. 1709 admeasuring 677 sq. ft. on 17th floor vide its letter dated 23.07.2019. The respondent has offered the possession of new unit no. 1709 vide its letter dated 23.07..2019

Handwritten signature

A.O.

31.8-21

5. He (complainant) paid all dues as demanded by the respondent from time to time. After expiry said period of 60 months, the complainant enquired about the progress of the construction but the respondents failed to provide any clear date of completion of the project to him. As per the payment plan opted by him (complainant), the latter timely made payment of Rs 30,33,712 i.e. 50 % of entire agreed consideration, along with miscellaneous and additional charges etc.
6. Contending that the respondent has committed gross violation of the provisions of section 18(1) of the Act by not handing over timely possession of the unit in question, the complainant has sought refund of entire amount of Rs 30,33,712, alongwith prevailing rate of interest i.e. 18 % p.a. compounded quarterly from the first date of payment to the promoter, Rs 5,00,000 towards mental agony and Rs 1,00,000 as cost.
7. The particulars of the project, and details of sale consideration etc are reproduced here as under in tabular form:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" Ocus 24 K", Sector 68, Gurugram, Haryana
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 up to 31.07.2020
5.	Name of licensee	Perfect Constech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 220 of 2017 dated 18.09.2017

UNIT DETAILS

1.	Unit no. (Original)	609
2.	Unit measuring (Original)	685 sq. ft.
3.	Unit No. (New)	1709
4.	Unit admeasuring (New)	677 sq. ft.
5.	Date of Booking	10.08.2013
6.	Date of Buyer's Agreement	17.02.2014
7.	Offer of Possession	23.07.2019 (Pg. No.
8.	Due Date of Delivery of Possession As per Clause No.11 (a) : The possession of said premises is proposed to be delivered within 60 months from the date of execution of buyer's 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.	17.08.2019



	Clause 14 : 6 months grace period from the date of expiry of said 60 months and receiving of occupation certificate of the said complex and the allottee not being in default of the terms and conditions set out in agreement.	
PAYMENT DETAILS		
9.	Total sale consideration	Rs 65,72,575/-
10.	Amount paid by the complainants	Rs 30,33,712/- (Statement of accounts annexed with complaint Page No. 15)
11.	Occupation Certificate	17.07.2019 (Annexure R2)

8. The respondent contested the complaint, by filing a reply dated 06.07.2021. It is averred that, the construction work of the tower in which unit in question is located is complete and occupation certificate for the same has been obtained on 17.07.2019. Accordingly, the possession of the said unit has been offered to the complainant vide letter dated 23.07.2019.
9. It is further the plea of respondent that complainant is defaulter and has neglected to make timely payments of instalments

[Signature]

A.O.

31-8-21

despite numerous demand letters. There is huge amount of Rs 43,64,563 which is due towards him.

10. The complainant has concealed his email dated 15.09.2019 wherein complainant has clearly shown his inability to make the payment of balance amount and has sought cancelation of his allotment and requested for refund of his principle amount after deduction charges (annexure R 6)

11. Moreover, in view of decision of Ld. Authority in case titled as **Rameshwar v Ocus skyscrapers realty Ltd**, the present complaint deserves to be dismissed. Further, the complainant had opted for management of the unit vide consent form dated 23.01.2018 and he had also sent consent letter dated 07.08.2018 for legally leasing out said unit for fetching good returns to the complainant. Accordingly, the unit of complainant was changed from 609 to 1709 as per the consent of complainant as the company was taking units on 17th floor, on lease.

12. The project is ready and operational since July 2019. Possession of the subject unit has already been offered to complainant. The latter has filed this complaint only to wriggle out of his obligations. Contending all this, respondent prayed for dismissal of complaint.

13. I have perused the documents on record and have heard the counsels for the parties.

Handwritten signature
A.O.
31/8/21

14. The complainant had requested for the refund of the amount paid by him due to his financial restrains which is evident from the email dated 15.09.2019 (Annexure R 6). The consent form dated 23.01.2018 and consent letter dated 07.08.2018 (Annexure R 9) are duly signed by the complainant, which proves that the change of unit was not unilateral and complainant himself had given his consent for the management of unit and leasing out the same. The respondent offered the possession of the unit vide letter dated 23.07.2019, but instead of taking possession of the allotted unit, the complainant approached this forum for refund of the amount, which is not maintainable.
15. Considering the facts of the case, no ground for the refund is made out and request for the same is declined. Complaint in hands is thus, dismissed.

File be consigned to the registry.

31.08.2021

(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 18.09.2021.