

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

Complaint no. : 814 of 2018
First date of hearing : 19.12.2018
Date of decision : 19.12.2018

Mr. Prem John

Plot no. 13, Sector 7, Dwarka,
New Delhi-110075

Complainant

Versus

M/S Ocus Skyscrapers Reality Limited
Office: S-33, Green Park, Main Market,
New Delhi-110016

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Subhash Grover Advocate for the complainant
Shri Sumesh Malhotra Advocate for the respondent

ORDER

1. A complaint dated 05.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and





Development) Rules, 2017 by the complainant Mr. Prem John, against the promoter M/S Ocus Skyscrapers Reality Limited., on account of violation of the clause 10(a) of buyer's agreement executed on 08.06.2013 in respect of unit no. UG-62, upper ground floor for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid.*

2. The particulars of the complaint are as under: -

- **Nature of the project- commercial project**
- **DTCP license no.- 173 dated 27.09.2008**
- **RERA registration no. 2018 of 2017 dated 18.09.2017**
- **Valid upto: 17.09.2022**
- **Occupation certificate dated: 25.09.2018 annexure (R2)**

1.	Name and location of the project	"OCUS MEDLEY", Sector 99, Gurugram, Haryana
2.	Project area	106.25 acres
3.	Date of execution of buyer's agreement	08.06.2013
4.	Unit no.	UG-62, upper ground floor
5.	Unit measuring	368 sq. ft.





6.	Payment plan	Construction linked payment plan
7.	Date of booking	03.12.2013
8.	Basic sale price	Rs. 30,91,200/-
9.	Total consideration amount as per statement of buyer's agreement	Rs.34,19,456 /-
10.	Total amount paid by the complainant till date	Rs.13,69,035/-as per statement of complainant
11.	Date of delivery of possession as per clause 10(a) of buyer's agreement i.e. 60 months from the execution of buyer's agreement	08.06.2018
12.	Delay in handing over possession till date	6 months
13.	Penalty clause as per buyer's agreement	Clause 14 of the agreement i.e. the company shall pay compensation @ Rs. 20/- per sq. ft. of the super.

Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement is available on record. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed reply and appeared





through his counsel on 19.12.2018. The case came up for hearing on 19.12.2018.

Brief facts of complaint

3. The complainant submitted that the petitioner approached the respondent and shows his desire to purchase a unit in the project namely "Ocus Medley" and enquired about the project and its costing and they selected the unit from the project bearing unit no. UG-062 having super area 34.19 Sq. metres (368 Sq. ft.), Ocus Medley, Sector-99, Gurugram. The respondent disclosed that as per the payment plan, the petitioner has to pay the instalment according to said plan for which they stated that Rs.3 lacs is required to be paid at the time of booking, and 10% is required to pay within the period of 60 days from the booking, further 10% amount of BSP was required to be pay within the period of 120 days from the date of booking and further 10% of BSP was required to be paid on the excavation and further 10% of BSP was required on the slab of basement level 2 and further 10% amount of BSP was required on the construction of ground floor and further 10 % amount of BSP was required to pay on the construction of



second floor, and further 10% amount of BSP was required on the plaster of the project, and further 10% amount of BSP was required on the elevation and the remaining 10% amount was required to pay at the time of handing over the possession. The basic sale price (BSP) of the said unit was settled as 30,91,200/- and the total amount payable as Rs.34,19,456/- including EDC etc. which was required to pay against the said unit.

4. The complainant submitted that respondent issued the receipt no.OM/1117, customer ID -OM-10095 dated 05.12.2012 vide which they described that Rs.2,91,008/- received as principle amount and Rs.8992/- received as sale tax amount, totalling Rs.3,00,000/- received from the petitioner against the above said unit by confirming about the receiving of the cheque no.640506 dated 29/11/2012.
5. The complainant submitted that respondent issued the provisional allotment letter of unit no. UG-062, in project Ocus Medley, Sector-99, Gurugram in the name of the petitioner.
6. The complainant submitted that petitioner deposited the amount of Rs.3,20,582/- vide cheque bearing no. 047205





dated 02.04.2013 drawn on Canara bank, payable in favour of Ocus Skyscrapers Pvt. Ltd. which was received by respondent on 28.03.2013 duly acknowledged by putting the seal and signature.

7. The complainant submitted that respondent asked the petitioner to execute the buyer agreement in respect of unit no. UG-062, Ocus Medley, Sector-99, Gurugram through a letter dated 23.05.2013. The respondent executed a buyer agreement dated 08.06.2013 in favour of the petitioner in respect of unit no. UG-062, having super area 368 sq. ft. (34.19 sq. metres) Ocus Medley, Sector-99, Gurugram including details of payment plan vide which the total consideration amount was assessed as Rs.34,19,456/- including EDC, IFMS, sinking fund etc.

8. The complainant submitted that the petitioner visited at the spot in the month of March, 2014 after depositing the fourth instalment regarding exaction then the petitioner found that the respondent did not start any construction over the said project. It was the reason the petitioner did not deposited the further instalment.



9. The complainant submitted that respondent (Ocus Skyscrapers Realty Ltd) issued a cancellation letter dated 10.11.2016 regarding unit no. UG-062, by which the respondent forfeit the earnest money of Rs.6,18,240/- and brokerage of Rs.2,07,000/- and interest one delay payment of Rs.3,09,734/- totalling amount of Rs.11,34,974/- was forfeited and they alleged that the petitioner is entitled to refund the amount of Rs.2,34,061/-. The said cancellation letter is illegal, null and void, ab-inito and arbitrary as the respondent has no right to issue the cancellation letter because they did not start the construction according to the settlement and terms and conditions of the allotment/ buyer agreement.
10. **Issues raised by the complainant are as follow:**
- i. Whether the respondent has violated the terms and conditions of the buyer's agreement by not starting the construction over the said project within the stipulated time period?
 - ii. Whether the cancellation letter is illegal and against the natural justice?



- iii. Whether the respondent has right to forfeit the deposited amount?
- iv. Whether the applicant is entitled to get the refund of the deposited amount (Rs.1,369,299) along with interest and penalty?

Relief sought

11. The complainant is seeking the following reliefs:

- i. The petitioners are entitled to get the refund of Rs.1,369,299 along with interest and penalty by the respondents because they failed to start the project within the stipulated time frame according to buyer agreement.
- ii. Any other relief which this hon'ble authority deems fit and proper may also be passed in favour of the petitioners and against the respondent.

Respondent's reply:

12. The respondent submitted that the present reply/pleadings are being filed through Mr. Gaurav Kapoor, who has been duly authorised by the respondent company in this regard.



13. The respondent submitted that the complaint of the complainant suffers from concealment and suppression of material facts and records, as the complainant has suppressed the fact that he along with his son had booked three commercial units in the project Ocus Medley and the fact that he was irregular in making payments and also the fact that he did not make payment towards his commercial units, which resulted in cancellation of his all three commercial units. Therefore, the complainant has approached this hon'ble authority with unclean hands and hence for this reason alone the complaint is liable to be dismissed.
14. The respondent submitted that without prejudice and admitting the complaint and its cause, the alleged cause of action of the complainant arose on March, 2014 when he stopped making further payments due to alleged non commencement of construction of the project and therefore it has been more than 4 years since then that the complainant has been sitting on his alleged cause and has not given any reason for the said delay in his whole complaint. Therefore, the



present complaint is not maintainable and is liable to be dismissed.

15. The respondent submitted that the complainant is not a consumer as defined in the consumer protection Act, 1986. As per the record the complaint had booked three commercial units with the respondent in its project Ocus Medley, which is self-evident and clearly shows that the complainant did not intend and book the commercial unit for his own personal use, and admittedly, has purchased the same for earning profit through investment, as the project seemed lucrative to him for earning quick gains in booming real estate market at that time. Pertinently, the complainant had booked three commercial units one in his name i.e. UG-062, the other one i.e. unit no. UG - 157 in his and his son's name and another unit having unit no. UG-150 in his son's name i.e. Mr. Siril John. As a matter of fact the complainant had booked the said units in question to earn profit by selling the same further and now the complainant wants refund of the amount allegedly paid by him, because property market is no more lucrative. Had the complainant booked the said unit for his own use, the



complainant would not have sought refund of the amount allegedly paid by him. Hence, the complaint of the complainant is liable to be dismissed solely on this ground.

16. The respondent submitted that the present complaint is not maintainable in law or on facts as the project has already been completed and **the occupation certificate for the same has already been received by the respondent.** The application for issuance of occupation certificate in respect of the commercial shop unit in question was made on 23.07.2018, i.e. as per the tentative period for completion of project mentioned in clause 11(a) of the builder buyer agreement dated 8th June, 2013. The occupation certificate has been thereafter issued on **25.09.2018.** A copy of the same is **Annexure R/2.** Thus, the project in question (Ocus Medley, Sector 99, Gurugram) is not an 'Ongoing Project" under Rule 2(1)(o) of the Rules. Therefore, the project is complete in all respects and the present complaint is liable to be dismissed on this ground alone.

17. The respondent submitted that the present complaint is not maintainable before this hon'ble authority. The complainant



has filed the present complaint seeking refund for alleged delay in delivering of possession of the commercial unit booked by the complainant. It is respectfully submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with rule 29 of the Haryana Real Estate (Regulation and Development) rules, 2017, (hereinafter referred to as "the rules") and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

18. The respondent submitted that right from the beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc, calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by the complainant and upon no response by the complainant for well over 2 years to the said reminders the respondent having no option had to cancel the



unit in question, in terms of the buyer's agreement duly executed between the parties. Pertinently, the respondent issued payment reminder letters inter-alia dated 01.10.2014, 30.10.2014, 25.11.2014, 17.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 17.03.2016, 19.04.2016, 12.05.2016 and 07.07.2016, which are annexed as Annexures R/3 to R/13. Also, the cancellation letter dated 10.11.2016 is annexed as Annexure R/14.

19. The respondent submitted that **Clause 54** of the builder buyer's agreement further provides that in case of default in making payment the unit in question can be cancelled by the respondent on its sole discretion. The complainant, having defaulted in making timely payment of instalments, has thus lost any entitlement to the unit in question under the buyer's agreement.
20. The respondent submitted that the construction of the project stands completed, and the respondent is in receipt of the occupation certificate in respect of the same. It is submitted that respondent is in process of issuing offer of possession letters to all the buyers in the project Ocus Medley.





21. The respondent submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent. It is the complainant who has consciously refrained from making the payments for the unit by raising false and frivolous excuses, pursuant to which the provisional allotment of the unit in question to complainant stood cancelled. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

27. With respect to the **first issue** raised by the complainant, as the respondent has obtained OC dated 25.09.2018, it is implied that the project is complete and fit for occupation. Therefore,



the construction of the said project is complete and hence, this issue is decided negative.

28. With respect to **rest of the issues** raised by the complainant, that the respondent is directed to withdraw the cancellation letter dated 10.11.2016 issue to the complainant and complainant should pay the balance amount due toward the respondent. The respondent is further directed not to levy any interest on delay payment to be made by the complainant and offer the possession of said unit. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project as the occupation certificate has already been obtained vide dated **25.09.2018**. The refund of deposited amount will also have adverse effect on the other allottees. As the project is also registered with the authority vide registration no. 2018 of 2017 dated 18.09.2017 and is valid upto **17.09.2022**. Therefore, the relief sought by the complainant cannot be allowed.



Findings of the authority

29. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. 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.

30. The complainant is investor who has booked 3 commercial units along with his son and never intended to occupied the same and instead to be leased out as per respondent's optional leasing, for returns on investments. However, the complainant stopped making payments and even after several reminders and opportunities given by the respondent for well over 1





year, did not respond to the same and on the pretext of financial difficulty kept on prolonging and delaying the payment.

31. Thereafter, after giving several reminders vide letters dated 01.10.2014, 30.10.2014, 25.11.2014, 17.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 17.03.2016, 19.04.2016, 12.05.2016 and 07.07.2016, and due opportunity, which remained unanswered, that out of compulsion the respondent issued cancellation letter dated 10.11.2016 as per the terms and conditions of BBA.
32. The complainant, after the unit was cancelled, called the respondent and manifested their interest in retaining the unit, provided, some concession on delayed payment interest is given to them or proposed to make payment after one and half year which is contrary to payment terms and against BBA, stating that they have financial difficulty. The buyer's like the instant complaint, not only affect project deliverables by not making payment on time, but also jeopardise the entire project, affecting interest of other buyers.



33. The complainant are seeking refund, as they have not received anticipated gains, as the project is located in ~~Sohna road~~ ^{Dwarka Expressway} and the price of real estate on the said road has not increased, as was anticipated by lot of investors. They have mentioned incorrectly before the authority that they had requested for cancellation of unit. their unit was cancelled in natural course and no confirmed request was ever made by them for refund, which was to be as per buyer's agreement.
34. ~~The respondent, has completed the construction and is carrying out the remaining finishing work at the site within time, even though the market conditions are not favourable, by availing loan and financing from banks at higher rate of interest than the buyers pay to the developers. If the prayer of the complainants is allowed, then it would disastrous for the already fragile and suffering finances of the company and as given the market scenario it is already becoming difficult to service the debt taken from the bank.~~
35. The respondent are ready to give possession of the unit, ignoring the cancellation, as respondent had not sold the unit further, specifically on the request of the complainant, any

Deleted
vide
order
dated
12/03/19

Corrected vide order dated
12/03/19





adverse order will materially harm the respondent. The respondent also agreed not to charge delayed payment interest of cancellation period. Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government.

Directions of the authority

36. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the complainant and respondent in the interest of justice and fair play:

- i. The complainant is given an option to pay the balance amount due towards the respondent and the respondent shall withdraw the cancellation letter dated 10.11.2016 issued to the complainant and offer possession without charging any interest on delay payment to be made by the complainant during the period of cancellation of unit.





HARERA
GURUGRAM

Complaint No. 814 of 2018

Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government.

37. The order is pronounced.
38. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.12.2018

Corrected judgement uploaded on 18.03.2019

HARERA
GURUGRAM



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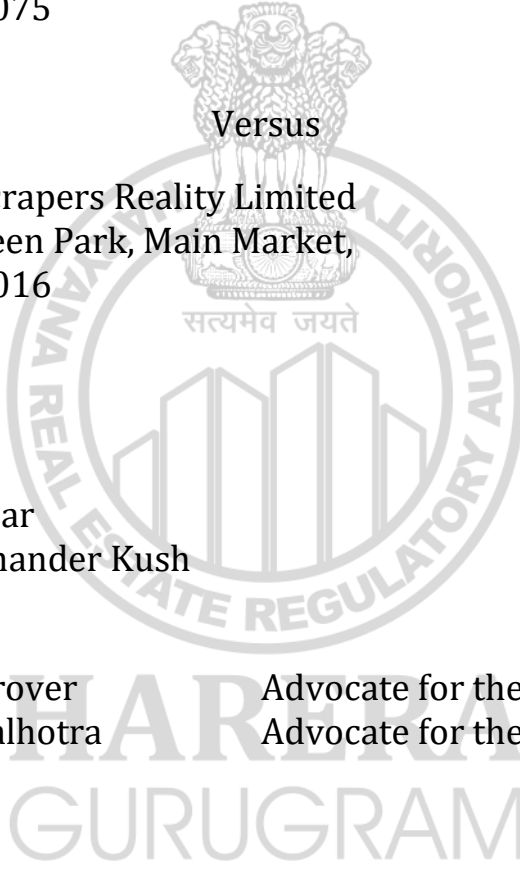
CORAM:

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APPEARANCE:

Shri Subhash Grover Advocate for the complainant
Shri Sumesh Malhotra Advocate for the respondent



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1. A complaint dated 05.09.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

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2. The particulars of the complaint are as under: -

- **Nature of the project- commercial project**
- **DTCP license no.- 173 dated 27.09.2008**
- **RERA registration no. 2018 of 2017 dated 18.09.2017**
- **Valid upto: 17.09.2022**
- **Occupation certificate dated: 25.09.2018 annexure (R2)**



1.	Name and location of the project	"OCUS MEDLEY", Sector 99, Gurugram, Haryana
2.	Project area	106.25 acres
3.	Date of execution of buyer's agreement	08.06.2013
4.	Unit no.	UG-62, upper ground floor
5.	Unit measuring	368 sq. ft.

6.	Payment plan	Construction linked payment plan
7.	Date of booking	03.12.2013
8.	Basic sale price	Rs. 30,91,200/-
9.	Total consideration amount as per statement of buyer's agreement	Rs.34,19,456 /-
10.	Total amount paid by the complainant till date	Rs.13,69,035/-as per statement of complainant
11.	Date of delivery of possession as per clause 10(a) of buyer's agreement i.e. 60 months from the execution of buyer's agreement	08.06.2018
12.	Delay in handing over possession till date	6 months
13.	Penalty clause as per buyer's agreement	Clause 14 of the agreement i.e. the company shall pay compensation @ Rs. 20/- per sq. ft. of the super.

Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement is available on record. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent filed reply and appeared



through his counsel on 19.12.2018. The case came up for hearing on 19.12.2018.

Brief facts of complaint

3. The complainant submitted that the petitioner approached the respondent and shows his desire to purchase a unit in the project namely "Ocus Medley" and enquired about the project and its costing and they selected the unit from the project bearing unit no. UG-062 having super area 34.19 Sq. metres (368 Sq. ft.), Ocus Medley, Sector-99, Gurugram. The respondent disclosed that as per the payment plan, the petitioner has to pay the instalment according to said plan for which they stated that Rs.3 lacs is required to be paid at the time of booking, and 10% is required to pay within the period of 60 days from the booking, further 10% amount of BSP was required to be pay within the period of 120 days from the date of booking and further 10% of BSP was required to be paid on the excavation and further 10% of BSP was required on the slab of basement level 2 and further 10% amount of BSP was required on the construction of ground floor and further 10 % amount of BSP was required to pay on the construction of



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4. The complainant submitted that respondent issued the receipt no.OM/1117, customer ID –OM-10095 dated 05.12.2012 vide which they described that Rs.2,91,008/- received as principle amount and Rs.8992/- received as sale tax amount, totalling Rs.3,00,000/- received from the petitioner against the above said unit by confirming about the receiving of the cheque no.640506 dated 29/11/2012.
5. The complainant submitted that respondent issued the provisional allotment letter of unit no. UG-062, in project Ocus Medley, Sector-99, Gurugram in the name of the petitioner.
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10. **Issues raised by the complainant are as follow:**

- i. Whether the respondent has violated the terms and conditions of the buyer's agreement by not starting the construction over the said project within the stipulated time period?
- ii. Whether the cancellation letter is illegal and against the natural justice?



- iii. Whether the respondent has right to forfeit the deposited amount?
- iv. Whether the applicant is entitled to get the refund of the deposited amount (Rs.1,369,299) along with interest and penalty?

Relief sought

11. The complainant is seeking the following reliefs:
 - i. The petitioners are entitled to get the refund of Rs.1,369,299 along with interest and penalty by the respondents because they failed to start the project within the stipulated time frame according to buyer agreement.
 - ii. Any other relief which this hon'ble authority deems fit and proper may also be passed in favour of the petitioners and against the respondent.



Respondent's reply:

12. The respondent submitted that the present reply/pleadings are being filed through Mr. Gaurav Kapoor, who has been duly authorised by the respondent company in this regard.

13. The respondent submitted that the complaint of the complainant suffers from concealment and suppression of material facts and records, as the complainant has suppressed the fact that he along with his son had booked three commercial units in the project Ocus Medley and the fact that he was irregular in making payments and also the fact that he did not make payment towards his commercial units, which resulted in cancellation of his all three commercial units. Therefore, the complainant has approached this hon'ble authority with unclean hands and hence for this reason alone the complaint is liable to be dismissed.

14. The respondent submitted that without prejudice and admitting the complaint and its cause, the alleged cause of action of the complainant arose on March, 2014 when he stopped making further payments due to alleged non commencement of construction of the project and therefore it has been more than 4 years since then that the complainant has been sitting on his alleged cause and has not given any reason for the said delay in his whole complaint. Therefore, the



present complaint is not maintainable and is liable to be dismissed.

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complainant would not have sought refund of the amount allegedly paid by him. Hence, the complaint of the complainant is liable to be dismissed solely on this ground.

16. The respondent submitted that the present complaint is not maintainable in law or on facts as the project has already been completed and **the occupation certificate for the same has already been received by the respondent.** The application for issuance of occupation certificate in respect of the commercial shop unit in question was made on 23.07.2018, i.e. as per the tentative period for completion of project mentioned in clause 11(a) of the builder buyer agreement dated 8th June, 2013. The occupation certificate has been thereafter issued on **25.09.2018.** A copy of the same is **Annexure R/2.** Thus, the project in question (Ocus Medley, Sector 99, Gurugram) is not an ‘Ongoing Project’ under Rule 2(1)(o) of the Rules. Therefore, the project is complete in all respects and the present complaint is liable to be dismissed on this ground alone.



17. The respondent submitted that the present complaint is not maintainable before this hon'ble authority. The complainant

has filed the present complaint seeking refund for alleged delay in delivering of possession of the commercial unit booked by the complainant. It is respectfully submitted that complaints pertaining to possession, compensation and refund are to be decided by the adjudicator under section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the Act” for short) read with rule 29 of the Haryana Real Estate (Regulation and Development) rules, 2017, (hereinafter referred to as “the rules”) and not by this hon’ble authority. The present complaint is liable to be dismissed on this ground alone.

18. The respondent submitted that right from the beginning, the complainant was extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc, calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by the complainant and upon no response by the complainant for well over 2 years to the said reminders the respondent having no option had to cancel the



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19. The respondent submitted that **Clause 54** of the builder buyer's agreement further provides that in case of default in making payment the unit in question can be cancelled by the respondent on its sole discretion. The complainant, having defaulted in making timely payment of instalments, has thus lost any entitlement to the unit in question under the buyer's agreement.

20. The respondent submitted that the construction of the project stands completed, and the respondent is in receipt of the occupation certificate in respect of the same. It is submitted that respondent is in process of issuing offer of possession letters to all the buyers in the project Ocus Medley.



21. The respondent submitted that all the demands that have been raised by the respondent are strictly in accordance with the terms and conditions of the buyer's agreement between the parties. There is no default or lapse on the part of the respondent. It is the complainant who has consciously refrained from making the payments for the unit by raising false and frivolous excuses, pursuant to which the provisional allotment of the unit in question to complainant stood cancelled. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present application deserves to be dismissed at the very threshold.

Determination of issues

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:



27. With respect to the **first issue** raised by the complainant, as the respondent has obtained OC dated 25.09.2018, it is implied that the project is complete and fit for occupation. Therefore,

the construction of the said project is complete and hence, this issue is decided negative.

28. With respect to **rest of the issues** raised by the complainant, that the respondent is directed to withdraw the cancellation letter dated 10.11.2016 issue to the complainant and complainant should pay the balance amount due toward the respondent. The respondent is further directed not to levy any interest on delay payment to be made by the complainant and offer the possession of said unit. Keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project as the occupation certificate has already been obtained vide dated **25.09.2018**. The refund of deposited amount will also have adverse effect on the other allottees. As the project is also registered with the authority vide registration no. 2018 of 2017 dated 18.09.2017 and is valid upto **17.09.2022**. Therefore, the relief sought by the complainant cannot be allowed.



Findings of the authority

29. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. 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.

30. The complainant is investor who has booked 3 commercial units along with his son and never intended to occupied the same and instead to be leased out as per respondent's optional leasing, for returns on investments. However, the complainant stopped making payments and even after several reminders and opportunities given by the respondent for well over 1



year, did not respond to the same and on the pretext of financial difficulty kept on prolonging and delaying the payment.

31. Thereafter, after giving several reminders vide letters dated 01.10.2014, 30.10.2014, 25.11.2014, 17.01.2015, 16.02.2015, 13.03.2015, 16.04.2015, 17.03.2016, 19.04.2016, 12.05.2016 and 07.07.2016, and due opportunity, which remained unanswered, that out of compulsion the respondent issued cancellation letter dated 10.11.2016 as per the terms and conditions of BBA.

32. The complainant, after the unit was cancelled, called the respondent and manifested their interest in retaining the unit, provided, some concession on delayed payment interest is given to them or proposed to make payment after one and half year which is contrary to payment terms and against BBA, stating that they have financial difficulty. The buyer's like the instant complaint, not only affect project deliverables by not making payment on time, but also jeopardise the entire project, affecting interest of other buyers.



33. The complainant are seeking refund, as they have not received anticipated gains, as the project is located in Sohna road and the price of real estate on the said road has not increased, as was anticipated by lot of investors. They have mentioned incorrectly before the authority that they had requested for cancellation of unit. their unit was cancelled in natural course and no confirmed request was ever made by them for refund, which was to be as per buyer's agreement.

34. The respondent, has completed the construction and is carrying out the remaining finishing work at the site within time, even though the market conditions are not favourable, by availing loan and financing from banks at higher rate of interest than the buyers pay to the developers. If the prayer of the complainants is allowed, then it would disastrous for the already fragile and suffering finances of the company and as given the market scenario it is already becoming difficult to service the debt taken from the bank.

35. The respondent are ready to give possession of the unit, ignoring the cancellation, as respondent had not sold the unit further, specifically on the request of the complainant, any



adverse order will materially harm the respondent. The respondent also agreed not to charge delayed payment interest of cancellation period. Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government.

Directions of the authority

36. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the complainant and respondent in the interest of justice and fair play:

- i. The complainant is given an option to pay the balance amount due towards the respondent and the respondent shall withdraw the cancellation letter dated 10.11.2016 issued to the complainant and offer possession without charging any interest on delay payment to be made by the complainant during the period of cancellation of unit.



Alternatively, option may be given to the complainant, in case refund is to be given, then respondent shall be allowed to retain 10% of earnest money, along delay payment interest and brokerage and other taxes paid to government.

37. The order is pronounced.

38. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 19.12.2018

Judgement uploaded on 25.02.2019

HARERA
GURUGRAM

