

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

Complaint no. : 917 OF 2020  
Date of first hearing : 24.03.2020  
Date of decision : 03.08.2021

Ocus Skyscrapers Realty Limited  
**Address:** Ocus Technopolis Building, Golf  
Course Road, Sector-54, Gurugram, Haryana  
- 122001

**Complainant**

1.Amit Kumar Gupta  
2.Punit Gupta  
**Both R/o** R-79, Greater Kailash, Part-1, New  
Delhi - 110048

**Respondents**

**CORAM:**  
Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**  
Arun Panwar  
Ex-parte

Advocate for the complainant

**EX-PARTE ORDER**

1. The present complaint dated 02.03.2020 has been filed by the complainant/promoter in Form CRA 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 19(6) (7) and (10) of the Act.

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Name and location of the project	OCUS 24K, Sector-68 Gurugram
2.	Nature of the project	Commercial Complex
3.	Project area	4.44 acres
4.	RERA registered/ not registered	Registered vide Registration no. 220 of 2017 dated 18.09.2017 valid upto 17.09.2022
5.	DTCP license no. and validity status	76 of 2012 dated 01.08.2012 valid upto 31.07.2020
6.	Name of the Licensee	M/s. Perfect Constech Pvt. Ltd.
7.	Unit no.	1108, 11 <sup>th</sup> floor <b>(Previous unit as per buyer's agreement)</b>
8.	New Unit	1705, 17 <sup>th</sup> floor <b>(New allotted unit as per offer of possession dated 23.07.2019 on page 110, annexure C14 of the complaint)</b>
9.	Unit ad- measuring	701 sq. ft.
10.	Date of execution of	11.02.2014

	apartment buyer's agreement	(Page 34 of the complaint)
11.	Total consideration	Rs. 66,84,035/- (As per payment plan - annexure III)
12.	Total amount paid by the respondents	Rs. 29,60,095/- (As per final statement of account, page 112 of complaint)
13.	Payment plan	Construction linked plan (Page 66 of the complaint)
14.	Due date of delivery of possession (As per clause 11(a) read with clause 14: 60 months + 6 months from the date of this agreement )	11.08.2019 (Grace period is given)
15.	Date of offer of possession	23.07.2019 (Page 110 of complaint)
16.	Delay in handing over possession till 23.07.2019 plus two months i.e., 23.09.2019	1 month 12 days
17.	Occupation Certificate	17.07.2019 (Page 114 of the complaint)

**B. Facts of the complainant**

3. The complainant has made following submissions in the complaint:
- i. That the complainant launched its project 'OCUS 24K' for the development, construction and marketing of commercial complex (hereinafter referred to as 'the said complex') in sector-68, Gurugram. That the respondents had applied for a



- service apartment bearing unit no.1108 vide application dated 19.08.2013, ad-measuring 701 sq. ft. (approx.) i.e. 65.12 sq. mtr. in the said complex and made a payment of Rs.4,81,292/- .
- ii. That thereafter, the respondents made a payment of Rs. 4,87,062/- vide cheque bearing no. 011394 drawn on bank of Maharashtra for which the complainant issued a receipt on 18.10.2013.
  - iii. That the respondents made a further payment of Rs. 6,76,640/- vide cheque bearing no.018323 drawn on bank of Maharashtra for which the complainant issued a receipt on 30.12.2013.
  - iv. Thereafter, the respondents entered into a buyer's agreement with the complainant on 11.02.2014 for the unit no.1108 in the project 'Ocus 24K' and the complainant allotted the above said service apartment provisionally for a total sale consideration is Rs. 66,84,035/-inclusive of BSP, EDC & ICD, IFMS, sinking fund, electricity connection charges, excluding GST and other statutory charges as applicable.
  - v. That the respondents have made a total payment of Rs.29,60,095/- till date to the complainant through cheques and direct transfer on different dates.

- vi. That as per the BBA dated 11.02.2014, the complainant had provisionally allotted a service apartment bearing no. 1108 having an area of 701 sq. ft. (approx.) to the respondents. That as per para 11 of the BBA, the complainant had agreed to deliver the possession of the said unit within 60 months from the date of signing of the buyer's agreement dated 11.02.2014 with an extended / grace period of 6 months.
- vii. That the project of the complainant is already registered with the authority vide registration no. 220 dated 18.09.2017 and the complainant has already finished construction in the said complex viz. 'Ocus 24K' and was granted occupation certificate by the competent authority on 17.07.2019 vide OC No. ZP-854/SD(DK)/2019/16980.
- viii. That on 03.08.2018, the complainant sent a letter to the respondents regarding proposal to partner with Bridge Street, a hospitality service brand, for operation and management of service apartments under its brand 'Places' for its project 'Ocus 24k' and the respondents gave their consent via a letter dated 09.08.2018.
- ix. That as the negotiation with the above-mentioned hospitality brand failed, the complainant executed a letter of intent with 'Intellistay Hotels' for lease of service apartments under their



brand 'Mango Suites - Select' as informed the same to the respondents vide letter dated 23.07.2019. In this regard, as per the consent and the agreed terms of BBA clause 20(c), the complainant changed the unit of the respondents from unit no. 1108 to unit no.1705 in the same project vide letter dated 23.07.2019.

- x. That the possession was offered for the changed unit bearing no. 1705 vide letter dated 23.07.2019 along with the final statement of account and the respondents were requested to clear the outstanding dues of their unit by 13.08.2019 before handing over of the possession.
- xi. That thereafter, the complainant had sent several reminder letters dated 22.08.2019, 07.09.2019 and 09.10.2019 and e-mails to the respondents demanding outstanding payments due towards their unit failing which holding charges @ Rs.20/- per sq. ft. per month will be applicable on them.
- xii. That till date, the respondents have not made any payment towards the outstanding dues and also did not reply to any of the letters and e-mails of the Complainant.

**C. Relief sought by the complainant:**

4. The complainant has sought the following reliefs:
  - i. To direct the respondents to make the payment as per the final demand notice amounting to Rs.43,43,138/- along with prescribed rate of interest from the date when the amount became due and take immediate possession of their unit.
  - ii. To direct the respondent to pay holding charges @ Rs.20/sq. ft. per month from the date of offer of possession till the date of actual possession of the unit by the respondents.
5. The authority issued a notice dated 05.03.2020 of the complaint the respondents via e-mail at [amit@guptapristine.com](mailto:amit@guptapristine.com) and though speed post. Despite service of notice, the respondents have preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

**D. Jurisdiction of the authority**

7. The authority has observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

8. 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 completed territorial jurisdiction to deal with the present complaint.

**F.II Subject matter jurisdiction**

9. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of allottee as per section 19(6),(7) and(10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



**E. Findings on the relief sought by the complainant**

**E1. Payment of balance amount by the respondents**

10. In the present complaint, it is an obligation on the part of the respondents-allottees to make timely payments under section 19(6) and 19(7) of the Act. The authority has observed that the total consideration of the apartment of Rs. 66,84,035/-and the respondents has paid only Rs. 29,60,095/-. The respondents allottees have failed to make payment despite several demand letters and reminders issued by the complainant promoter. As per clause 8 of apartment buyer agreement, it is the obligation of the allottees to make timely payments and the relevant clause of BBA is reproduced as under:

***"8. Time is the Essence***

*The Allottee(s) agrees that time is essence with respect to payment of Total Price and other charges, deposits and amounts payable by the Allottee(s) as per this Agreement and/ or as demanded by the Company from time to time and also to perform/ observe all other obligations of the Allottee(s) under this Agreement. The Company is not under any obligation to send any reminders for the payments to be made by the Allottee(s) as per the schedule of payments and for the payments to be made as per demand by the Company or other obligations to be performed by the Allottee(s)."*

11. In the present complaint, the complainant/promoter has already offered the possession on 23.07.2019 and as per section 19(10) the Act, allottees shall take physical possession of the apartment, plot, 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. Section 19(10) proviso read as under.

*"Section 19: - Right and duties of allottees.-*

.....  
*19(10) states that 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.*

12. The respondents/allottees has failed to abide by the terms of agreement by not making the payments in timely manner and take the possession of the unit in question as per the terms and conditions of the apartment buyer's agreement and the payment plan opted by the respondents/allottees. Further cause of action also arose when despite repeated follow-ups by the complainant and the complainant having performed their contractual obligations, the respondents/allottees withheld their contractual obligation. The respondents/allottees shall make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under.

*"Section 19: - Right and duties of allottees.-*

.....  
*19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section*



*13[1] shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

*19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

**13. Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of 60 months plus a grace period of 6 months from the date of execution of the agreement. In the present complaint, the due date of handing over possession comes out to be 11.08.2019 which is calculated from date of execution of agreement i.e., 11.02.2014. It is further provided in agreement that promoter shall be entitled to a grace period of 6 months for pursuing the occupancy certificate etc. from DTCP under the Act in respect of the project. As a matter of fact, the complainant had applied for the occupation certificate on 11.03.2019 and the occupation certificate was issued to the promoter on 17.07.2019. Accordingly, this grace period of 6 months is to be allowed to the promoter at this stage.

**14. Rate of interest to be paid by respondents for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoters, in default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

15. Therefore, interest on the delay payments from the allottees shall be charged at the prescribed rate i.e. 9.30% by promoter. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.



**16. Admissibility of delay possession charges at prescribed**

**rate of interest:** There is a delay on the part of the complainant to deliver the possession of the unit on time of 1 month and 12 days. As per clause 11(a) read with clause 14, the possession was due on the expiry of 60 months plus a grace period of 6 months from the date of execution of the buyers' agreement. The complainant is liable to pay the delayed possession charges under section 18 (1) of the Act at the prescribed rate i.e. 9.30% for every month of delay on the amount paid by the respondents-allottees with the complainant-builder from the due date of possession i.e., 11.08.2019 till 23.09.2019. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents/allottees is in contravention of the section 19(6),

19(7) and 19(10) of the Act by not making the payment on time and not taking the possession as per the agreement. By virtue of clause 11(a) read with clause 14 of the agreement executed between both the parties on 11.02.2014 the possession of the subject apartment was to be delivered within 60 months the date of signing of this agreement with the buyer or within a grace period of six months, i.e. 11.08.2019. Accordingly, it is the failure of the complainant/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the complainant is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 11.08.2019 till the offer of possession (23.07.2019) plus two months as per the provisions of the Act i.e. 23.09.2019 at the prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate.



18. In the present complaint, the occupation certificate was granted by the competent authority on 17.07.2019. However, the complainant offered the possession of the unit on 23.07.2019, so it can be said that the respondents came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the respondents/allottees keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 11.08.2019 till the expiry of 2 months from the date of offer of possession (23.07.2019) which comes out to be 23.09.2019. Accordingly, it is the failure of the allottee/respondents to fulfil their obligations, responsibilities as per the buyer's agreement dated 11.02.2014 to take the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 19(6), 19(7)

and 19(10) of the Act on the part of the respondents is established.

**F. Directions of the authority**

19. 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) of the Act:

- i. The respondents/allottees shall make the requisite payments and take the possession of the said apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of one month.
- ii. Interest on the delay payments from the respondents shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the respondents/allottees in case of delayed possession charges.
- iii. The delayed possession charges shall be paid by the complainant at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the respondents from due date of possession i.e. 11.08.2019 till 23.09.2019 i.e.



expiry of 2 months from the date of offer of possession (23.07.2019). The arrears of interest accrued so far shall be paid to the respondents by the complainant/promoter within 90 days from the date of this order as per rule 16 (2) of the rules.

iv. The complainant/promoter shall not charge anything from the respondents/allottees which is not the part of the agreement. However, holding charges also shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

20. Complaint stands disposed of.

19. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2021

  
(Vijay Kumar Goyal)

Member

Judgement uploaded on 29.11.2021.