

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

Complaint no.	:	350 of 2021
Date of filing complaint:		04.02.2021
First date of hearing:		31.03.2021
Date of decision	:	09.03.2022

Satish Kumar Chhabra R/o: B-290, Sector 26, Noida, U.P.	Complainant
Versus	
M/s Ocus Skyscraper Realty Limited R/o: C-94, First floor, Shivalik, New Delhi-110017	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Mayank Sharma (Advocate)	Complainant
Sh. Rahul Rajan (Advocate)	Respondent

ORDER

- The present complaint has been filed by the complainant/allottee 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.

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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Ocus Medley", Sector 99, Gurgaon
2.	Project area	106.25 acres
3.	Nature of the project	Commercial project
4.	DTCP license no. and validity status	173 of 2008 dated 27.09.2008 and valid upto 26.09.2025
5.	Name of licensee	Moonlight Buildwell Pvt. Ltd. and 6 others
6.	RERA Registered/ not registered	Registered 218 of 2017 dated 18.09.2017
	RERA Registration valid up to	17.09.2022
7.	Unit no.	G-60, Ground floor [Page no. 17 of the complaint]
8.	Unit measuring (super area)	473 sq. ft. [Page no. 17 of the complaint]
9.	Revised area	494.73 sq. ft. [Page no. 48 of the complaint]
10.	Date of allotment letter	N/A
11.	Date of execution of builder buyer agreement	14.08.2013 [Page no. 14 of the complaint]
12.	Possession clause	11 The company based on its present plans and estimates and subject to all just exceptions endeavors 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 or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement. In case there is any delay on the part of the allottee(s) in making of payments to the company then notwithstanding rights available to the company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the company (emphasis supplied)
13.	Due date of delivery of possession	14.08.2018 Calculated from the date of the agreement
14.	Total sale consideration	Rs.61,33,391/- [As per payment plan at page no. 30 of the complaint]
15.	Total amount paid by the complainant	Rs. 30,43,468/- [As per all the receipts annexed with the complaint at page no. 42-48] Rs.30,63,521/- [As per final statement of accounts annexed with the reply at page no.24]
16.	Payment plan	Construction linked payment plan [As per page no. 30 of complaint]

17.	Offer of possession	25.10.2018 [Annexure R/3 on page 16 of the reply]
18.	Occupation Certificate	25.09.2018 [Annexure R/2 on page 14 of the reply]
19.	Cancellation letter	11.05.2020 [Annexure P/8 on page 55 of the complaint]
20.	Delay in delivery of possession till offer of possession(25.10.2018) + 2 months i.e. 25.12.2018.	4 months 11 days

B. Facts of the complaint:

3. That the complainant was approached by representatives of the company. who promised good return on investment if the complainant booked a property in the project Ocus Medley, there after the complainant invested their hard earned money to book shop no-G-60(ground floor) area-43.94 sq. m. ie 473 sq. ft. In project Ocus Medley, Sector-99, Gurgaon, Haryana. For a total sum of 33,391/- Being developed and marketed by Ocus Skyscraper Reality Ltd. having its office at S - 33 , Green Park, Main market Delhi and at Ocus Technopolis, Golf Course road, Sector-54, Gurugram, Haryana and filled application form and made a payment of Rs. 4,00,000/- and the complainant till date have invested a total amount of Rs.31,16,659/-on different dates. Payment Details are given in table below.

S. No	Date	Amount
1.	15.11.2012	4,00,000/-
2.	30.01.2013	7,25,516/-
3.	17.04.2013	5,64,704/-
4.	25.06.2014	6,76,715/-

5.	16.07.2014	49,427/-
6.	26.07.2014	6,835/-
7.	30.09.2014	6,73,728/-
8.	15.11.2014	6,805/-
9.	28.06.2017	16,929/-
	Total	31,16,659/-

4. That after a gap of about 10 months a builder buyer agreement dated. 14.08.2013 was executed between the complainant and the respondent dishonestly and deliberately had put in a clause that the 60 months for possession will start from the date of execution of the agreement rather than the date of booking of the shop.
5. That the complainant received a notice/demand from the respondent regarding, the arbitrary increase in the area and total amount of the booked property in the concerned project, that the complainant after the increase in area and price of the property informed the builder about his dissatisfaction as the price of the property was increased without his consent and as he didn't want to invest more in the property after see the substandard development of the property and arbitrary increase in price of the property the complainant requested the respondent to allot him a smaller property and to return the excess amount deposited by him.
6. That after many telephonic conversation between the complainant and the respondent, the complainant did not receive any satisfactory response from the respondent and the complainant was forced to send a letter dated 26.05.2019 to respondent to allot him a smaller property and to return the excess amount deposited by him.

7. That the respondent after a month responded vide email dated 16.07.2019 and informed the complainant about the non-availability of the any smaller unit) but deliberately didn't respond to return of the deposited amount by the complainant
8. That after many emails and telephonic follow-ups the OP responded and called the complainant for a meeting, during which the complainant gave a post-dated cheque dated-15.03 2020 for Rs.300000/-to the respondent with the understanding that representative of the respondent will discuss the request/issue of the complainant with the company's management, and will inform the complainant, but to the utter surprise of the complainant the OP without giving any information regarding the discussion with management directly submitted the above said cheque which got dishonoured, as there was no communication from the respondent for which the complainant sent a email dated 19.03.2020 regarding the mis-use of the above said cheque give in good faith by the respondent.
9. That on 11.05.2020 the complainant received a cancellation letter from the respondent regarding the property booked by the complainant and on 20.05.2020 the complainant received an email directing him to further pay Rs.63,50,323/- over the already paid amount of Rs 31,16,659/- that is even more then the agreed cost/amount of the property of Rs.61,33,391/- which clearly shows the mens rea and malafide intention of the respondent towards their buyers.
10. That when the complainant tried to communicate with the respondent, the respondent is not responding to the queries of the

complainant, it appears that the respondent is deliberately not responding to the complainant and hence the complainant has lost all his faith in the respondent. it is crystal clear that the respondent is trying to cheat the complainant and done gross breach of trust for which the complainant is suffering.

11. That the cause of action for filing this complaint arose in May 2020 and is continuous, when the respondent has failed to deliver the possession of the flat till date and is demanding illegal interest and penalty from the complainant.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s):
 - i. Direct the respondent to deliver shop of same size as booked by the complainant on the same price.
 - ii. Direct the respondent to withdraw the cancellation notice/letter and not to proceed with the cancellation process of the shop/property and not to create any third party right by re-allotment of the property to any other person.

D. Reply by respondent

13. At the outset, it is submitted that the complainant has booked a unit being no. G-60, admeasuring 473 sq. ft. for a consideration of Rs.70,40,624 /-, in the project of the respondent being "Ocus Medley". The builder buyer agreement for the said Unit was executed between the parties on 14.08.2013.
14. The complainant is misrepresenting before this Ld. Authority in his complaint that the said unit was to be handed over in 60 months from the date of execution of the said agreement.

However, it was agreed in the Clause 11 (a) read with clause 14 of the said agreement that the construction of the said unit shall be completed within 66 months from the date of execution of said agreement. Thus, the respondent was under an obligation to complete the said unit by 13.02.2019. As agreed in the said agreement in clause 10 that there can be change in the area of the said unit by $\pm 25\%$ on final layout of the project.

15. However, in order to deliver the said unit to the complainant before the time period promised, the respondent was constructing the said project at a fast pace and therefore, the same was completed in September 2018. It is most respectfully submitted that the respondent had obtained the occupation certificate with respect to said project on 25.09.2018. Thus, the respondent offered the possession of the said unit to the complainant vide letter, dated 25.10.2018.
16. It is very pertinent to mention here that the above fact has been very cleverly concealed by the complainant and hence, the present complaint ought to be dismissed on the ground of concealment as well as on the ground that the complainant was misleading this Ld. Authority.
17. Despite receiving the above letter / emails for offer of possession from the respondent, the complainant did not come forward to take over the said unit by paying outstanding amount.
18. Although the respondent was not under any obligation to send any reminders to the complainant to make the outstanding payments, it is humbly submitted that the respondent had in fact, addressed numerous reminders to the complainant for payment

of the balance consideration with respect to the said unit. The said reminders are listed herein below:

Sr. No.	Date of Letter / Email
1.	05.12.2018
2.	09.01.2019
3.	19.04.2019
4.	20.05.2019
5.	18.12.2019
6.	04.02.2020
7.	05.02.2020
8.	04.03.2020
9.	07.03.2020

19. In view of the above, it is submitted that the complainant is chronic defaulters as he has failed and neglected to make timely payments with respect to the said unit despite numerous reminders addressed to him. The above default has been committed by the complainant, despite knowing the fact that timely payment of the consideration of the said unit is essence of the said agreement as was recorded in the said agreement at clause no. 8. The complainant had also not made the timely payment of the instalments even when the said project was under construction. Several reminders seeking demand of the due instalments for the said Units were also sent to the complainant prior to the offering of possession and the same are being reproduced herein:

Sr. no.	Dates of letters/email
1.	31.03.2018
2.	07.03.2018
3.	09.02.2018

4.	17.01,2017
5.	21.12.2016
6.	30.11.2016
7.	12.05.2016
8.	06.07.2016
9.	19.04.2016
10.	16.04.2015
11.	13.03.2015
12.	16.02.2015
13.	03.04.2014
14.	05.02.2014

20. Despite the above defaults of the complainant, the respondent has also waived off delay payment interest of an amount of Rs.54,584/- from the outstanding payment to be made by the complainant.
21. It is submitted that the complainant has failed and neglected to make the balance payments with respect to the said unit till date. It is submitted that an amount of 38,37,313/- is outstanding from the complainant towards the consideration of the said Unit which is apart from the outstanding delayed payment interest of Rs.31,70,619/-, which has been calculated till the date of cancellation of the said unit. Thus, an amount of Rs.71,47,459/- was outstanding payment, due and payable with respect to the said unit by the complainant to the respondent.
22. It is further submitted that the complainant in his email, dated 26.05.2019, has clearly shown his inability / constraint to pay the balance amount and has sought cancellation of his allotment and requested for refund of his principle amount or on the contrary has sought smaller unit as he is unable to pool money to pay the

balance consideration for the said unit. The email of the complainant was duly replied by the respondent vide email, dated 16.07.2019, wherein the respondent has clearly stated that they do not have any other unit available. The cheque which was presented by the respondent on assurance by the complainant that the same shall be honoured on presentation. However, the same got dishonoured, which is criminal offence under section 138 of Negotiable Instrument Act, 1881, but as a gesture of goodwill, the respondent file the criminal complainant against the complainant.

23. A perusal of the above email of the complainant clearly shows that it is the complainant who is seeking cancellation of his booking and is not ready to fulfil his obligation as agreed under the said agreement. The complainant has nowhere written that the respondent had delayed in handing over the possession of the said unit or that the respondent has not fulfilled its obligations or is deficient in services.
24. It is submitted that the respondent has completed the said project and said unit before the time period promised to the complainant. Despite the above efforts, the complainant has always defaulted in making the timely payment of the instalment / outstanding amount. Thus, left with no option and after waiting for almost two years after offering the possession of the said unit, the respondent cancelled the said unit of the complainant on 11.05.2020.
25. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint

can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

26. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings regarding relief sought by the complainant:**F.1 Direct the respondent to deliver shop of same size as booked by the complainant on the same price.**

Considering the above-mentioned facts, the authority observes that the respondent vide letter dated 25.10.2018 had intimated the allottee about the increase in super area from 473 sq. ft. to 494.73 sq. ft. The respondent has increased the super area by 21.73 sq. ft. In other words, the area of the said unit has been increased by 4.59%.

F.2 Direct the respondent to withdraw the cancellation notice/letter and not to proceed with the cancellation process of the shop/property and not to create any third party right by re-allotment of the property to any other person.

The complainant was allotted unit no G- 60 on ground floor in the project "Ocus Medly" by the respondent builder on the basis of booking on 15.11.2012 for a total consideration of Rs. 61,33,391/- under the construction linked payment plan given on page 30 of

the complaint. After that BBA was executed on 14.08.2013, the respondent builder continued to receive the payments against the allotted unit. It has brought on record that the complainant had deposited several amounts against the allotted unit and paid a total sum of Rs.30,63,521/- as per final statement of accounts at page 24 of reply. The complainant has paid around 50% of the total sale consideration. It is also a fact that demand for remaining amount was raised against the allottee. The respondent builder placed on record reminders dated 05.12.2018, 09.01.2019, 19.04.2019, 04.02.2020 and 04.03.2020 raising demand for the amount due, but did not get any positive result. So, it ultimately led to cancellation of his unit vide letter dated 11.05.2020 pertaining to cancellation of the allotted unit on account of non-payment of dues.

However, there is nothing on record to show that after cancellation of the allotted unit vide letter dated 11.05.2020 the respondent builder returned the remaining paid up amount to the complainant after deducting 20% of total price of the said unit as per clause 4 of the buyer's agreement dated 14.08.2013. So, on this ground alone, the cancellation of allotted unit is liable to be set aside. Even otherwise the cancellation of the allotted unit by the respondent builder is not as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately. But that was also not done. So, on this ground also the cancellation of allottee unit is not valid in the eyes of law.

The counsel for the complainant has stated at bar that the respondent has offered the possession of the unit by increasing the area of the shop and demanding more money. As such he has not taken the possession of the said shop and subsequently, the respondent has cancelled the unit vide letter dated 11.05.2020.

The counsel for the respondent has increased the super area without the consent of the complainant and even without obtaining the approval of building plans. As such the respondent cannot charge extra amount of the increased area. The counsel for the respondent agrees to consider handing over of the physical possession of the shop at the allotment rate for pre-revised super area of 473 sq. ft. instead of revised area of 494.73 sq. ft if the complainant is willing to make the balance payment with interest at prescribed rate of 9.30% per annum (i.e. MCLR + 2%) otherwise the promoter respondent can refund the amount after deducting the cancellation amount on the RERA regulations i.e. up to 10% of the total consideration amount.

Both the parties are directed to do the needful accordingly. If there any dispute between them, respondent shall refund the amount to the complainant after deducting 10% of the total sale consideration as per regulation of RERA.

G. Directions of the authority:

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to hand over the physical possession of the shop at the allotment rate for pre revised super area of 473 sq. ft instead of 494.73 sq. ft. after receiving the remaining amount due besides interest at the prescribed rate of 9.30% p.a. against that unit (473 sq. ft.) within 90 days.
- ii. If either of the party fails to comply with the above-mentioned directions within the stipulated period, then the allottee shall be refunded the amount deposited with the respondent builder after deduction of 10% of total sale consideration as per regulation of RERA.

28. Complaint stands disposed of.

29. File be consigned to registry.

V.I. 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 09.03.2022

HARERA
GURUGRAM