

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No.515 of 2021
Date of Decision: 16.05.2022

Ocus Skyscrapers Realty Limited, Registered Office: 5th Floor,
Ocus Technopolis Building Golf Course Road, Sector 54,
Gurugram 122 001 (Haryana)

...Appellant-Promoter

Versus

1.Richa Sharma;

2.Usha Sharma both residents of P-6/1, DLF City, Phase-3,
Gurugram 122 008 (Haryana)

...Respondents-Allottees

CORAM:

Justice Darshan Singh (Retd),	Chairman
Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Shri Anuj Dewan, Advocate
Ld. counsel for the appellant-promoter.

Shri Nitin Jaspal, Advocate,
Ld. counsel for respondents-allottees.

ORDER:

Inderjeet Mehta, Member (Judicial):

Feeling aggrieved by the impugned order dated 03.08.2021 handed down by the Learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called, 'the Authority'), vide which a complaint bearing No.CR/871/2020 instituted by the appellant-promoter for

issuance of directions to the respondents-allottees to make the payment of outstanding dues and holding charges and to take possession of the unit, was not only dismissed, but the appellant-promoter was also directed to refund the balance amount after deducting 10% of the paid up amount, the appellant-promoter has chosen to prefer the present appeal.

2. As back as in the year 2013, the appellant-promoter had launched its project **“OCUS24K”** for the development, construction and marketing of commercial buildings consisting of office/Retail Space(s)/ Service Apartment(s)/ Other Commercial/ Parking Space(s), in Sector 68, Sohna Road, Gurugram (Haryana). The respondents-allottees approached the appellant-promoter vide application dated 19.06.2013 to purchase one Retail Space bearing No.UG-161 in the said project and paid an amount of Rs.4,00,000/- (Rupees four lakhs) to the appellant-promoter towards the said unit. Thereafter, the respondents-allottees made three payments of Rs.1,30,000/- (Rupees one lakh thirty thousand), Rs.1,37,000/- (Rupees one lakh thirty seven thousand) and Rs.2,66,875/- (Rupees two lakhs sixty six thousand eight hundred and seventy five) vide three cheques in the month of August 2013. Subsequently, the Builder Buyer’s Agreement (hereinafter called, the Agreement) was executed between the parties on 30.12.2013. As per the

application for provisional allotment dated 19.06.2013, the area of unit was stated to be measuring 311 square feet and total sale consideration thereunder was Rs.34,51,788/- (Rupees thirty four lakhs fifty one thousand seven hundred and eighty eight) excluding the taxes.

3. As per the Clause 4 of the said Agreement dated 30.12.2013, 20% of the total price of the unit amounting to Rs.6,90,358/- (Rupees six lakhs ninety thousand three hundred fifty eight) was to be treated as earnest money to ensure the fulfillment of the terms and conditions. Further, as per Clause 8 of the said Agreement dated 30.12.20213, the respondents-allottees agreed that time is the essence with respect to the payment of the total price and other charges. Further as per Clause 11(a) read with Clause 14 of the said Agreement dated 30.12.2013, the project was to be completed within a span of 66 months from the date of agreement unless there is delay or failure due to department delay or due to any circumstances beyond the power and control of the appellant-promoter. Subsequent to that the appellant-promoter sent a Demand Letter-cum-Service Tax Invoice to the respondent for instalment of Rs.7,94,955/- (Rupees seven lakhs ninety four thousand nine hundred and fifty five), as per agreed 'payment plan', regarding which the respondents-allottees raised several objections vide e-mail

dated 23.04.2014. The said e-mail dated 23.04.2014 was responded to in detail by the appellant-promoter vide e-mail dated 25.04.2014 and requested the respondents-allottees to visit the site as per their convenience regarding the objections raised by them in their e-mail dated 23.04.2014. Thereafter, the appellant-promoter sent various Demand Letters/Reminder Letters/Final Opportunity Letters/ E-mails dated 18.04.2015, 13.05.2015, 30.06.2015, 30.06.2017, 21.07.2017 and 18.08.2017 to the respondents-allottees for making the payment due to them, but of no avail. Till the filing of the complaint, the respondents-allottees had only made the payment of Rs.17,27,509/- (Rupees seventeen lakhs twenty-seven thousand and five hundred nine) out of the aforesaid total consideration of the unit. The appellant-promoter had completed the project and obtained Occupation Certificate (OC) on 17.07.2019. The appellant-promoter also offered possession of the said unit to the respondents-allottees vide letter dated 18.07.2019 along with Final Statement of Account and requested the respondents-allottees to clear the outstanding dues of their unit on or before 08.08.2019 and takeover the possession of the said unit after completing possession formalities. Since, the respondents-allottees did not make the payment of the outstanding dues nor they had taken the possession of the

unit after making the payment, so having no other option, the appellant-promoter was constrained to institute the complaint before the Authority.

4. Upon notice, the respondents-allottees in their joint reply before the Authority has resisted the complaint on the ground that the same is false, frivolous and the appellant-promoter is guilty of suppressing the material facts and has not approached the Authority with clean hands.

5. On merit, they have taken stand that on 19.06.2013 they had paid booking amount of Rs.4,00,000/- (Rupees four lakhs) vide two cheques of Rs.2,00,000/- (Rupees two lakhs) each bearing Nos.749298 and 012912 drawn on Punjab National Bank and ICICI Bank respectively. However, the appellant-promoter executed the Agreement after unjustified delay of 06 months on 30.12.2013. On 01.08.2013, the respondents-allottees made further payment of Rs.1,30,000/- (Rupees one lakh thirty thousand), Rs.1,37,000/- (Rupees one lakh thirty seven thousand) and Rs.2,66,875/- (Rupees two lakhs sixty six thousand eight hundred and seventy five) total amounting to Rs.5,33,875/- to the appellant-promoter vide cheques drawn on ICICI Bank and Punjab National Bank. Further it has been submitted that as per Clause 1.2 of the Agreement dated 30.12.2013, the appellant-promoter was required to handover the

possession of the said property latest by March 2018. This fact has been denied that the Demand Letter-cum-Service Tax Invoice for Rs.7,94,955/- (Rupees seven lakhs ninety four thousand nine hundred and fifty five) raised by the appellant-promoter was as per agreed payment plan. The respondents-allottees had raised several objections vide e-mail dated 23.04.2014 when it was noticed that not even a single cubic meter of floor slab of basement level two was casted. Thus, demand letter dated 22.04.2014 for casting of floor slab of basement level two was completely invalid and against the terms of the Agreement. The respondents-allottees have also pleaded that the appellant-promoter has miserably failed to obtain the Occupation Certificate (OC) for the project well within time and the project has been considerably delayed. This has been denied that the reminder letter dated 18.04.2015 for raising demand of Rs.4,85,736/- (Rupees four lakhs eighty five thousand seven hundred and thirty six) was as per the agreed payment plan. The respondents-allottees have vehemently denied that they failed to make any payment as per agreed payment plan and the delays were only due to the conduct of the appellant-promoter and no delay can be attributed to the respondents-allottees. The appellant-promoter has miserably failed to

complete the project within stipulated period as mentioned in the Agreement.

6. After hearing Ld. counsel for the parties, the Ld. Authority disposed of the aforesaid complaint filed by the appellant with the following observations:-

“Arguments heard.

The complainant-builder has filed the present complaint against the allottee to make the balance payment and to take possession of the unit along with holding charges.

*Occupation Certificate has been obtained by the respondent on **17.07.2019** and possession of the unit has been offered by the complainant-builder to the respondent-allottee on **18.07.2019**.*

The matter has been heard comprehensively. It has been brought on record that the promoter had been issuing request for payment/instalments as per construction linked plan but nothing tangible has happened on the part of the allottee at length, as such, the promoter has no choice but to cancel the unit. The allottee wants to wriggle out from the project as he has no sufficient funds to make the balance payment to the builder and as such the builder has no choice but to refund the balance amount after deducting 10% of the paid up amount, as per the provisions of RERA Regulation No.11/RERA GGM Regulations 2018 dated 05th December, 2018. As such, the matter stands disposed of. File be consigned to the registry.

7. Hence, the present appeal.

8. Opening his side of arguments, Ld. counsel for the appellant-promoter, while referring to the pleadings and documents available on the record, has submitted that the Ld. Authority not only has handed down a non-speaking and cryptic order, but has also deviated itself from adjudicating various issues, which had cropped up on account of the pleadings of parties. Further, he has submitted that as per Clause 11(a) read with Clause 14 of the Agreement dated 30.12.2013, the project was to be completed within a span of 66 months from the date of Agreement and, thus, the due date of possession was 30.06.2019. The appellant-promoter after obtaining Occupancy Certificate (OC) 17.07.2019, offered the possession to the respondents-allottees on 18.07.2019 along with final statement of account and requested the respondents-allottees to pay the outstanding dues of their unit on or before 08.08.2019 and to take over the possession of the said unit. Lastly, it has been submitted that out of the outstanding dues of Rs.36,30,831/- (Rupees thirty six lakhs thirty thousand eight hundred and thirty one), the respondents-allottees have paid only Rs.17,27,509/- (Rupees seventeen lakhs twenty seven thousand five hundred and nine) and as in spite of offering the possession on 18.07.2019, they have not paid the

balance outstanding amount, so they be directed to take the possession, after paying the outstanding dues.

9. Countering this vehemently, the Ld. counsel for the respondents-allottees has submitted that after the unit had been booked by the respondents-allottees on 19.06.2013, the appellant-promoter was obligated to execute the Agreement within a period of one month. However, the said Agreement was executed between the parties after a lapse of about 06 months i.e. on 30.12.2013 without any justifiable cause and this has resulted into the miscalculation of due date of possession of the unit. Further, it has been submitted that as per the Clause 1.2 of the Agreement dated 30.12.2013, the appellant-promoter was required to handover the possession of the said unit latest by March, 2018. Lastly, it has been submitted that since the construction at the site had not been raised in a time bound manner, so the various demands raised by the appellant-promoter to make the payment of the unit is without any justification.

10. From the pleadings, as has been referred to above, as well as aforesaid submissions, the Ld. Authority was required to adjudicate that whether there has been delay of 06 months in execution of the Agreement; whether the construction was being raised by the appellant-promoter in a time bound manner and the demands of the amount due raised by the

appellant-promoter were justified, and whether the respondents-allottees had defaulted in making the payments at due time.

11. However, instead of dwelling on all these aforesaid issues, as referred above, the Ld. Authority has handed down a non-speaking and cryptic order. As is explicit from the perusal of the impugned order, the Ld. Authority has observed that as nothing tangible had happened on the part of the respondents-allottees at length, as such, the appellant-promoter has no choice, but to cancel the unit. Nowhere, this is the case of either of the parties that allotted unit had been cancelled by the appellant-promoter. Further, the observation made by the Ld. Authority that the respondents-allottees want to wriggle out from the project is also without any basis because the constant stand of the respondents-allottees has been that the appellant-promoter had not been raising the construction of the unit in time bound manner, coupled with the fact that out of the total sale consideration of Rs.34,51,788/- (Rupees thirty four lakhs fifty one thousand and seven hundred and eighty eight) of the unit, the respondents-allottees have admittedly made the payment of Rs.17,27,509/- (Rupees seventeen lakhs twenty seven thousand five hundred and nine). Thus, these aforesaid observations of the Ld. Authority in the impugned order are

not only beyond pleadings of the parties but are also without any basis.

12. Since the Ld. Authority has not adjudicated the various issues as have arisen out of the pleadings of the parties, as per the evidence and documents available on record, so in these circumstances, we have been left with no option but to remit the case back to the Ld. Authority to properly adjudicate the controversy between the parties in accordance with the pleadings taken by them and as per the provisions of law.

13. Thus, as a consequence of the aforesaid discussion, we are of the considered opinion that the impugned order handed down by the Ld. Authority cannot be sustained in the eyes of law and deserves to be set aside and is accordingly set aside.

14. Both the parties are hereby directed to appear before the Ld. Authority on 31st May, 2022. It is expected that the Ld. Authority after going through the pleadings, evidence available on record and hearing the parties, would adjudicate the controversy between the parties, expeditiously by handing down a detailed and speaking order, to avoid any further delay in the disposal of the complaint as per provisions of law. The amount of Rs.15,54,758/-, deposited with this Tribunal as pre-deposit, along with interest accrued be sent to the Ld. Authority for disbursement to the appellant subject to tax liability, if any, as per law and rules.

15. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram for information and necessary compliance.

16. File be consigned to the record, after completion.

Announced:
May 16, 2022

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana

Appeal No.515 of 2021
Ocus Skyscrapers Realty Pvt. Ltd. V. Richa Sharma and anor.

Ocus Skyscrapers Realty Pvt. Ltd.
Vs.
Richa Sharma and another
Appeal No.515 of 2021

Present: None.

Vide our separate detailed order of the even date, the impugned order handed down by the Ld. Authority has been set aside and the case has been remitted back to the Ld. Authority for disposal of the complaint by passing a detailed and speaking order in accordance with the provisions of law. Accordingly, the present appeal stands disposed of.

Copy of the detailed order be sent to the concerned parties/Ld. counsel for the parties for information.

File be consigned to the record.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

16.05.2022
Manoj Rana