

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

Complaint no. : 3587 of 2019
First date of hearing : 05.12.2019
Date of decision : 18.11.2020

Mr. Bhagat Singh Negi & Anr.

Address:- House no. 862, Sector-40 Gurugram **Complainants**

Versus

M/s Ocus Skycrapers Realty Ltd.

Office at:- Ocus Technopolis Golf Course Road
Sector-54 Gurugram.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Harshit Batra
None

Advocate for the Complainants
Advocate for the Respondent

ORDER

1. The present complaint dated 05.09.2019 has been filed by the complainants/allottees 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 them.

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.	Project name and location	OCUS MEDLEY, Sector-99, Gurugram.
2.	Project area	106.25 acres 4.14 acres (registered area)
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	173 of 2008 dated 27.09.2008 valid upto 26.09.2025
5.	Name of licensee	Moonlight Buildwell Pvt. Ltd and 19 others
6.	RERA Registered/ not registered	Registered vide No. 218 of 2017 valid up to 17.09.2022
7.	Unit no.	G-190, Ground floor,
8.	Unit measuring	258 sq. ft. Increased area 336.99 sq. ft.
9.	Date of execution of Flat Buyers Agreement	07.08.2013
10.	Payment plan	Construction linked payment plan
11.	Total consideration as per payment plan	Rs. 25,60,343/- (as per final statement of account, page 62 of complaint)
12.	Total amount paid by the complainant	Rs. 17,01,266/-



		(as per final statement of account, page 62 of complaint)
13.	Due date of delivery of possession as per clause 11 (a) -60 months from the date of signing agreement	07.08.2018 (due date calculated from the date of execution of agreement)
14.	Offer of possession	22.10.2018 (page 15 of reply)
15.	Delay in handing over possession till offer of possession	2 months and 15 days
16.	OC received on	25.09.2018 (page 60 of reply)

3. As per clause 11(a) of the Flat Buyers Agreement dated 07.08.2013 the possession was to be delivered within a period of 60 months from the date of signing of agreement which comes out to be 07.08.2018. Clause 11 (a) of the Flat Buyers Agreement is reproduced below.

11 (a). Schedule for possession of the said unit

11(a) 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 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.....”

4. The complainants submitted that even after the booking of the units, the Respondent failed to execute a Builder Buyer Agreement. The Complainant raised his concern several of



times by visiting the office of the Respondent and through telephonic conversation. Despite the several requests, the Respondent consistently raised demands and threatened the Complainant to make payment towards the sale consideration of the unit.

5. That the ground floor units (G-190) was booked on 30.09.2011. However, the agreement was executed on 07.08.2013, there was the delay about 2 years in the execution of this agreement. That the respondent being in a dominant position has arbitrarily increased the super area of the unit no. G-190 from 258 Sq. Ft. to 336.99 Sq. Ft. which is in violation of clause 10 of the agreement. That the respondent failed to intimate the complainant about the change in super area and without taking the written consent of the complainant, changed the super area and raised a demand of huge amount.
6. That the Complainant time and again requested the Respondent to cancel his unit number UG-73 and adjust the amount paid against the total sale consideration of unit No. UG-73 in unit No. G-190 in order to pay the demands as per the agreement only and not the unreasonable demands they have been making though no consent had been taken from the complainant at the time of such changes being made in the allotted unit and return the balance amount to the Complainant. However, the Respondent instead of cancelling

the unit No. UG-73 to has arbitrarily cancelled the unit no. G-190 vide Cancellation Letter dated 06.07.2019 which came as utter shock to the complainant. The Complainant again through various emails raised his concern against the cancellation of Unit No. G-190, however, the Respondent having ulterior motive to cheat and dupe the Complainant did not address the concerns. The Complainant prays before the Ld. Authority to direct the Respondent to adjust the amount paid for unit no. UG-73 to G-190.

7. That the offer of possession dated 22.10.2018 is not valid as same was in violation to the terms and conditions of the agreement and with the Section 18(1)(a) of the Act. The respondent is liable to make a valid Offer of possession by complying with the terms and conditions of the agreement and as per Section 18(1)(a) of the Act. Section 18(1)(a) of the Act says the promoter shall offer the possession in accordance with the terms of the agreement for sale. Therefore, the respondent shall be directed to make a fresh valid Offer of Possession in accordance with the law. Hence, this complaint inter-alia for the following reliefs:

- i. Direct the respondent to adjust the amount paid for unit No. UG-73 to G-190 and return the balance amount to the Complainant;

- ii. Direct the Respondent to withdraw the unlawful raised demand towards the arbitrarily increased super area in unit no. G-190;
 - iii. Direct the Respondent to charge the super area only as per the terms and conditions of the Agreement;
 - iv. Direct the Respondent to provide the bifurcation of loading of super area on unit area of unit no. G-190 of the Complainants;
 - v. Direct the Respondent to pay interest for the delay caused in execution of the builder buyer agreement.
8. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
9. The reply has been received in the said matter dated 27.09.2019, however the complainant has filed an application for additional submission and amendment in relief sought of the complaint. The complainant has amended the relief sought of the complaint that are:
- i) To adjust the amount paid for unit no. UG-73 to G-190 and return the balance amount to the complainant and to withdraw the unlawful raised demand towards the arbitrarily increased super area in unit no. G-190.



10. The reply to such application has not been filled by the respondent. Reply received dated 27.09.2019 is with regard to refund of the said unit and not related to the amended relief, thus is not considered.
11. Copies of all the relevant documents have been filled and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.
12. The Authority, on the basis of information and other submission made and the document filed by the complainant, is of considered view that there is no need of further hearing in the complaint.
13. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and based on the findings of the authority regarding contravention the Authority is satisfied that the respondent is in contravention of the provisions of the Act, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of Flat Buyer Agreement executed between the parties on 07.08.2013, possession of the booked unit was to be delivered within a period of 60 months from the date of execution of agreement which comes out 07.08.2018. The complainant has booked a commercial unit on 2.12.2013 and has already paid an amount of Rs.17,01,266/- as on date




against a total sale consideration of Rs.20,36,843/-. However, the complainant has raised two major issues (i) that the respondent has arbitrarily cancelled the unit vide cancellation letter dated 6.7.2019 on account of non-payment and has refunded an amount of Rs.9,12,333/- which he has not accepted/enchased and returned the cheque to the respondent due to his one sided arbitrarily action (ii) there is an increase of area by 32% i.e. from 258 sq. feet to 336.99 sq. feet which is not valid as per provisions of the new model BBA as framed in the rules. As such, the respondent cannot increase/decrease plus minus up to 5% of the area and mainly, the increase in costs to the tune of Rs.25,60,347/- is on that account.

14. Keeping in view the one sided arbitrarily action of the respondent/builder and misusing of his dominating position, the impugned cancellation order is hereby set aside and the respondent is directed to abide by the provisions of law that he cannot increase area plus minus up to 5%. The respondent is directed to give the possession of the commercial unit to the complainant within a period of one month i.e. 19.12.2020 failing which action under section 37 of the Real Estate (Regulation and Development) Act, 2016 shall be initiated against the respondent/builder. Any payment due towards the complainant too shall be paid/adjusted by him.



15. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 07.08.2018 till offer of possession i.e. 22.10.2018 of the booked unit as per the provision of section 18(1)(a) of the Act read with rules 15 of the Rules.
16. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- (i) The respondent is directed to pay interest at the prescribed rate of interest i.e. @ 9.30% p.a. for every month of delay on the amount paid by the complainant from due date of possession i.e. 07.08.2018 till the offer of possession i.e. 22.10.2018;
 - (ii) The respondent is directed to abide by the provisions of law that he cannot increase area plus minus up to 5%. The respondent is directed to give the possession of the commercial unit to the complainant within a period of one month i.e. 19.12.2020 failing which action under section 37 of the Real Estate (Regulation and Development) Act, 2016 shall be initiated against the respondent/builder.


- (iii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on or before 10th of every month;
- (iv) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- (v) The respondent shall not charge anything from the complainant which is not the part of the agreement.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.11.2020


(Subhash Chander Kush)

Member

Judgment uploaded on 04.12.2020

HARERA
GURUGRAM