



Complaint no. 802 & 1062 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1062 OF 2018

Pinki Sharma

....COMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.

....RESPONDENT(S)

2.COMPLAINT NO. 802 OF 2019

Sangeeta

....COMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing:

26.07.2022

Hearing:

11th(in complaint no. 1062 of 2018)
9th (in complaint no. 802 of 2019)

Present through: -
Video conferencing

Mr. Prikshit Yadav, Counsel for the complainant
(in complaint no. 1062 of 2018)
Mr Vivek Sethi, Counsel for the complainant
(in complaint no. 802 of 2019)
Mr. Sanjeev Sharma, Counsel for the respondent.

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ORDER (RAJAN GUPTA-CHAIRMAN)

1. Captioned complaints have been taken up together as these pertain to same project of respondent and facts and grievances involved are more or less identical. Taking complaint no. 802 of 2019 as lead case, facts averred are that a flat had been booked in the project 'Omaxe Shubhangan' of the respondent, situated at Jhajjar in the year 2012 by original allottee Mr. Rajesh Kumar, for total sale consideration of ₹ 56,09,800/- ,against which an amount of ₹ 50,06,577/- had been paid to the respondent by the year 2014. Original allottee was allotted apartment no. 602 in Tower 11 of the project vide allotment letter dated 06.12.2012 however no flat buyer agreement was executed between both parties. In July 2013, complainant purchased booking rights of the flat in question. It has been alleged by complainant that respondent has failed to complete construction of the project and delivery of possession of allotted unit has not been given. Complainant time and gain enquired from respondent in regard to delivery of possession but received no response. Therefore, complainant has filed this complaint seeking relief of refund of deposited amount along with interest.



2. Shri Vivek Sethi, learned counsel for complainant (in complaint no. 802 of 2019) submitted that flat in question had been booked by original allottee in the year 2012 and by the year 2014 respondent had taken more than 90% of the agreed consideration. No builder buyer agreement has been executed by respondent, and further respondent has failed to construct the project. Till 2018 respondent had failed to construct the site in question. Complainant who had waited for a long time for possession is not willing to wait any further therefore, present complaint has been filed before Authority seeking refund of paid amount alongwith interest.

Mr. Sethi submitted that for so many years respondent has even failed to communicate in regard to status of project, and now in the month of March 2022, respondent has issued offer of possession to complainant. However, since there has been inordinate delay in offering possession, complainant is no longer interested in taking possession. He further alleged that respondent has failed to apprise complainant with regard to status of construction of project and with regard to occupation certificate for tower in question. Therefore, Learned counsel reiterated that prayer of complainant may be accepted and she may be granted relief of refund of paid amount along with interest.

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3. Mr. Prikshit Yadav, learned counsel for complainant (in complaint no. 1062 of 2019) submitted that respondent has offered possession without competition of project as no additional construction work has been carried out at site and the project has also not received occupation certificate. Therefore, said offer of possession is not a valid offer.

4. On the other hand, Shri Sanjeev Sharma, learned counsel for respondent submitted that project of respondent stands completed with all basic amenities available at the site. After completing construction respondent issued an offer of possession to complainant in the month of March 2022 which the complainant has failed to accept.

At this point a specific query was put up to learned counsel for the respondent as to whether the project has received occupation certificate, to which learned counsel sought time to take instructions.

5. During the course of hearing, Authority after hearing submissions of both parties observed that as per submission of learned counsel for respondent the project in question stands completed and in such situation, allowing refund to some allottees could jeopardise the entire project, because it could lead to similar demands from other allottees. Also, as per policy and precedent, refund is not granted in the cases where project has been completed or is likely to be completed

within foreseeable future. Authority has to balance the interests of individual allottee with interests of remaining allottees and the project as a whole.

Therefore, Authority had expressed its view that request of complainant for refund of paid amount could not be accepted on the grounds mentioned above, however, complainant will be entitled to possession of said flat along with delay interest for the entire period of delay caused, from the due date of offer of possession upto actual offer of possession after obtaining occupation certificate in terms of Rule 15 of HRERA Rules 2017.

6. However, upon perusal of record in two other similar matters pertaining to same project of the respondent, Authority has learnt that Department of Town and Country Planning has recently renewed licence of the said project of respondent namely 'Omaxe Shubhangan' till May 2025. Renewal of licence for said project till the year 2025 gives rise to uncertainty in regard to current status of construction of the project in question and, it has become necessary to know exact status of construction of the project and whether occupation certificate has been applied for by the respondent. In order to properly adjudicate the issue, Authority in those matters has directed the respondent to submit a report regarding stage of construction of project along with latest photographs

of project including photographs of the respective units booked by each of the complainant. Since units booked by complainants in captioned complaints pertain to same project of the respondent, therefore, Authority adjourns these matters also to be listed along with other similar matters with a direction to respondent to submit current status of units booked by complainants along with detailed report of project in question. Report should be filed at least 15 days before next date of hearing with an advance copy supplied to complainant.

7. Adjourned to **11.10.2022**



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]