



Complaint no. 312 & 313 of 2021

# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 312 OF 2021

Sunil Bhardwaj and Dharamvir .....COMPLAINANT(S)

VERSUS

Omaxe Buildwell Pvt Ltd. ....RESPONDENT(S)

## 2. COMPLAINT NO. 313 OF 2021

Dalbir Singh & Sunil Kaushik .....COMPLAINANT(S)

VERSUS

Omaxe Buildwell Pvt Ltd. ....RESPONDENT(S)

**CORAM:** Rajan Gupta  
Dilbag Singh Sihag

Chairman  
Member

**Date of Hearing:** 10.08.2022

**Hearing:** 7th

**Present:-** Mr. Sudeep Gehlawat, Learned counsel for the complainant  
Mr. Munish Gupta, Learned counsel for the respondent through video conferencing

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

1. Captioned complaints have been taken up together as grievances and facts involved are identical and against the same project of the respondent. Taking Complaint no. 312 of 2021 as lead case, facts averred

are that a commercial shop bearing no.47 had been booked in the project namely 'Omaxe city' situated at Rohtak on 18.05.2010 by original allottee by paying an amount of Rs 2,75,000/- on the assurance that the possession of the shop would be delivered within 18 months from the date of booking i.e by 18.11.2011. Complainant had purchased booking rights pertaining to said unit from original allottee and same were transferred in his favour on 20.06.2011. Builder buyer's agreement has not been executed between the parties. Complainant has paid an amount of ₹ 27,22,060/- against basic sale consideration of 27,85,000/- by the year 2011. It is alleged by the complainant that respondent has failed to develop basic amenities at site and deliver possession of booked units. Therefore, complainant has filed present complaint seeking possession of booked unit along with delay interest for delay in delivery of possession.

2. Shri Sudeep Gehlawat, learned counsel for complainant submitted that complainant had booked a commercial unit in the project of the respondent in the year 2010 with an assurance that possession of the same will be delivered by November 2011 and by June 2011 complainant had made payment of more than 90% of basic sale consideration towards booked unit. More than 10 years have passed but respondent has failed to deliver possession to the complainant.



Respondent has retained huge amount of ₹ 27,22,060/- paid by complainant since 2011, but no offer of possession has been issued to the complainant till date. Learned counsel for the complainant prayed that directions be issued to the respondent to handover physical possession to complainant alongwith payment of delay interest for delay in delivery of possession.

3. On the other hand, respondent in its reply has submitted that project in question has been completed and an application for grant of completion certificate has been applied on 06.01.2016. Complainant, however, has concealed the fact that an offer of possession has already been issued to him on 23.12.2016 and further various reminder letters were sent to the complainant for taking possession upon payment of balance amount however, complainant failed to come forward for taking possession. Therefore, it is the complainant who was at fault here for not taking possession. It is pertinent to mention that respondent has failed to attach a copy of offer of possession or reminder letters issued to complainant along with reply.

4. After hearing both parties and perusing written submissions, Authority observes that complainant in this case had booked a unit in the project of the respondent in the year 2010, possession of which has not been delivered till date. Though respondent claimed that an offer of

possession has been issued to the complainant on 23.12.2016 without placing on record a copy of said offer of possession to substantiate his claim. Moreover, any offer of possession without receiving completion certificate is not a valid offer in the eyes of law. Further respondent has provided limited information with regard to completion certificate nevertheless an application for grant of completion certificate has been filed on 06.01.2016 as per his submission but failed to apprise the Authority whether project has received the same or not. It is an admitted fact that completion of the project has been delayed by many years but now as per submission of the respondent, project is complete and unit booked by complainant is ready for handover. Complainant himself is ready and willing to take possession of booked unit. Further, complainant is entitled to payment of delay interest in terms of Rule 15 of HRERA Rules 2017 for any delay caused in delivery of possession. Now only question remaining is with regard to period for which delay interest is to be granted to the complainant.

5. In present case, unit had been booked by the complainant in the year 2010 and respondent had only assured the complainant that possession would be delivered within a period of 18 months without execution of builder buyer agreement. No other document on record placed to provide an exact date for handing over of possession to the





complainant. In such cases, in order to determine deemed date of possession, Authority takes a reasonable period of 3 years for construction of project and by the end of said period respondent should be able to deliver possession of booked unit. Since in this case unit had been booked on 18.05.2010, taking 3 years from said date, possession was required to be handed over to the complainant by 18.05.2013.

6. Therefore, complainant is entitled to receive delay interest for delay in delivery of possession from deemed date of possession, till a fresh offer of possession is to be issued to the complainant after receiving occupation certificate. Respondent is directed to pay upfront delay interest for the period from deemed date of possession till date of order i.e 10.08.2022 and further monthly interest till possession has actually been offered to the complainant.

7. On the basis of principle laid down in para above, delay interest payable to each allottee from deemed date of possession till passing of order and monthly interest till actual offer of possession is calculated at the rate of 9.80% and is awarded as shown in following table:



Co. No.	Amount (in Rs)	Deemed date of possession	Delay interest till 10.08.2022	Monthly Interest.
312 of 2021	20,25,000/-	18.05.2013	18,33,352/-	16,855/-
313 of 2021	20,25,000/-	18.05.2013	18,33,352/-	16,855/-

8. Respondent is directed to issue a fresh offer of possession to complainant after receiving completion certificate alongwith a payment of upfront delay interest and further monthly interest shall be payable to complainant till actual offer of possession is made.

9. With these directions, cases are disposed of. Order be uploaded on the website of Authority and files be consigned to record room



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**RAJAN GUPTA**  
[CHAIRMAN]



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**DILBAG SINGH SIHAG**  
[MEMBER]