



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1062 OF 2018

Pinki SharmaCOMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.RESPONDENT(S)

2.COMPLAINT NO. 802 OF 2019

SangeetaCOMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.RESPONDENT(S)

3. COMPLAINT NO. 1556 OF 2019

Vandana ChawlaCOMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.RESPONDENT(S)

CORAM: Nadim Akhtar Member
Dilbag Singh Sihag Member

Date of Hearing: 11.10.2022

Hearing: 12th(in complaint no. 1062 of 2018)
10th (in complaint no. 802 & 1556 of 2019)

Present: -

Mr. Prikshit Yadav, Counsel for the complainant
(in complaint no. 1062 of 2018) through VC
Mr Vivek Sethi, Counsel for the complainant
(in complaint no. 802 of 2019) through VC
Mr. Manmeet Singh, Counsel for the complainant
(in complaint no. 1556 of 2019) through VC
Mr. Sanjeev Sharma, Counsel for the respondent

ORDER (NADIM AKHTAR- MEMBER)

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.
2. The matter had come up before Authority on 26.07.2022, when after hearing both parties, Authority had passed a detailed order which is reproduced below for reference:-

“ 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.

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*

2. Similarly in complaint no. 1556 of 2019, respondent was directed to place on record report of current status of the project along with latest photographs of the unit of complainant.

3. Respondent has failed to file any report with regard to current status of the project or latest photographs of the respective unit booked by the complainants in any of the captioned complaints as per directions issued by the Authority. Shri Sanjeev Sharma, learned counsel appearing on behalf of the respondent submitted that he has received no further

updates in respect of the project from his client and sought time to comply with directions issued vide order dated 26.07.2022.

4. Shri Vivek Sethi, learned counsel for the complainant in complaint no. 802 of 2019, submitted that vide order dated 26.07.2022, Authority had observes that though the respondent had submitted that the project in question stands completed with all basic amenities available at the site however, upon perusal of record in two other similar matters pertaining to same project of the respondent, it was 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 which had raised uncertainty in regard to current status of construction of the project in question 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. However, respondent has failed to file any report with regard to the current status of the project or the respective units booked by the complainant and is today seeking more time.



Learned counsel for the complainant submitted that respondent is merely engaging in delay tactics when in fact the project in question is far from complete which is supported by the fact that extension has been granted by Department of Town Country Planning to complete the project till the year 2025. Complainant in complaint no. 802 of 2109 had booked a unit in the project of the respondent in the year 2012. Apartment no. 602 in Tower 11 of the project vide allotment letter dated 06.12.2012. No flat buyer agreement has been executed between both parties. Taking a three year period from date of allotment as reasonable period for construction of unit, the respondent should have handed over possession of the apartment by the year 2015. However, the respondent failed to complete the project and issue an offer of possession to the complainant for more than six years. It is only now in the month of March 2022 that respondent has issued offer of possession to complainant. However, no information has been provided with regard to completion of the project or grant of occupation certificate. Even now, respondent has failed to apprise the Authority whether the project has received occupation certificate. Mere verbal submissions of learned counsel for respondent that project is complete and all basic amenities are there at site is not sufficient. Therefore, he prayed the Authority that the complainants who have already waited for so many years for possession of their booked unit are



not willing to wait further for an indefinite period. Since there has already been an inordinate delay in delivery of possession, the complainant is no longer interested in taking possession. 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.

5. Shri Manmeet Singh, learned counsel for the complainant in complaint no. 1556 of 2019 stated that the project is registered with the Authority and registration has been renewed upto 30.06.2022 . As per the buyers agreement executed between both the parties on 30.08.2014, respondent should have delivered possession to the complainant by 01.09.2016. More than six years have passed but respondent has failed to offer possession to the complainant. Complainant had paid an amount of ₹ 55 lakh to the respondent by the year 2017, out of total sale consideration of ₹ 56 lakh but despite taking almost entire consideration amount, the respondent has failed to timely develop the project and deliver possession. A delay of more than six years and counting tantamounts to an inordinate delay in delivery of possession. Further, the respondent is yet to complete the project and apply for grant of occupation certificate which does not seem probable in foreseeable future. Complainant who has already waited for such a long time is not willing to wait any further. Despite availing several opportunities, respondent has



failed to apprise the Authority with regard to current status of the project and the unit booked by complainant. Therefore, he prayed the Authority that directions be issued to respondent to refund the amount paid by complainant along with interest.

6. After hearing submissions of all the parties, Authority observes that complainant in Complaint no. 802 of 2019 had booked an apartment in the project of the respondent in the year 2012 for which she paid an amount of ₹ 50,06,577/- against total sale consideration of ₹ 56,09,800/- . Despite taking more than 90% of total sale consideration, the respondent failed to execute a builder buyer agreement and further failed to timely develop the project. It is only in the month of March 2022 that the respondent has issued an offer of possession to the complainant but said offer has been given without occupation certificate or providing current status of the project. On the other it is submitted by the respondent that the project in question is complete and all basic amenities are available at site. Further with regard to occupation certificate, the respondent had sought time to enquire about the same.

Authority in two other similar matters pertaining to same project of the respondent, had learnt that Department of Town and Country Planning has recently renewed licence of the said project of the respondent namely 'Omaxe Shubhangan' till May 2025. Renewal of licence for said



project till the year 2025, has raised uncertainty in regard to current status of construction of the project in question and the claim of respondent that the project is complete. In order to properly adjudicate the issue it became necessary to know exact status of construction of the project and whether occupation certificate has been applied for by the respondent. Therefore, respondent was directed to submit current status of units booked by complainants along with detailed report of project in question. However, despite availing opportunity, respondent has failed to submit said report and apprise the Authority in regard to current status of the project. Even today, learned counsel for the respondent has sought time for the same.

7. In light of these circumstances, it is observed that possession of the booked unit should have been delivered by the respondent in the year 2015-2016. There has been an inordinate delay in delivery of possession. During the course of proceedings, it has been verbally submitted by respondent that the project is complete in all respect. However, keeping in view the fact that licence for said project has been renewed by DTCP till the year 2025, gives rise to uncertainty about the status of the project in the minds of allottees who have invested their hard earned money in the project. Respondent had sought time to apprise the Authority in regard to the current status of the project and respective units of the complainants but despite availing time respondent has failed to submit his report.



However, merely an oral submission of the respondent cannot be considered valid and subsequently holds no merit. Since there has been an inordinate delay in delivery of possession complainant/allottee is no longer interested in taking possession . Complainant who has already waited for more than six years for delivery of possession cannot be forced to wait endlessly for delivery of possession. Further, the impugned offer of possession issued by respondent in the month of March 2022, is not a valid offer because respondent has failed to apprise whether the project in question has received occupation certificate or not?. In such a situation, Authority cannot force the complainants to continue with the project and therefore, complainant is entitled to receive refund of paid amount along with interest in terms of Rule 15 of HRERA Rules 2017 i.e SBI MCLR+ 2%. Amount shall be refunded to the complainant as per provisions of Rule 16 of the HRERA Rules 2017

8. In complaint no. 802 of 2019, complainant has paid an amount of ₹ 50,06,577.40/- to the respondent. The amount of interest payable to the complainant has been calculated at the rate of 10.00 % and the same works out to ₹ 41,35,387/-. Therefore, respondent is directed to pay an amount of ₹ 91,41,964.40/- as refund of deposited money alongwith interest to the complainant.

9. In complaint no. 1556 of 2019, complainant has paid an amount of ₹ 55,86,782.26/- to the respondent. The amount of interest payable to the complainant has been calculated at the rate of 10.00 % and the same works out to ₹ 42,56,947/-. Therefore, respondent is directed to pay an amount of ₹ 98,43,729.26/- as refund of deposited money alongwith interest to the complainant.

10. Complaint cases 802 of 2019 & 1556 of 2019 are **disposed of**. Order be uploaded on the website of the Authority and files be consigned to record room.

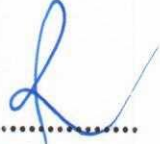
11. In Complaint no. 1062 of 2018, complainant has claimed that an amount of ₹ 55,58,788/- has been paid to the respondent without attaching proof of entire said payments being made to the respondent. Respondent on the other hand has admitted to only a cum of ₹ 53,22,562.00/-. In the absence of receipts Authority would not not be able to ascertain dates on which amounts have been paid and total amount deposited by the complainant. So, in order to settle the controversy and to calculate the interest on amount paid by the complainant, Authority decides to rehear the matter on with direction to the complainant to place on record proof of payments(receipts) made by her to the respondents. Complainant is directed to submit said proof athletes fifteen days before next date of hearing. Complaint no 1062 of 2018 is adjourned to



14.12.2022 for the limited purpose of verification of amounts paid by the complainant to the respondent.



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NADIM AKHTAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

