



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

|                         |              |
|-------------------------|--------------|
| Complaint no.:          | 1496 of 2022 |
| Date of filing.:        | 21.06.2022   |
| First date of hearing.: | 09.08.2022   |
| Date of decision.:      | 15.12.2022   |

Savitri Hooda  
Devak Ram Bhawan, Civil Road Opposite  
Chhotu Ram Chowk, Rohtak  
124001

....COMPLAINANT

VERSUS

Omaxe Ltd  
Regd. office.- 7, Local Shopping Centre,  
Kalkaji, New Delhi- 110019.

....RESPONDENT

**CORAM:** Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

**Date of Hearing:** 15.12.2022

**Hearing:** 1st

**Present:**

Mr. Sudeep Gehlawat, Counsel for complainant

Mr. Munish Gupta, Counsel for the respondent.

*Geeta Rathee*

**ORDER (DR. GEETA RATHEE SINGH-MEMBER)**

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. Unit and Project Related Details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.No. | Particulars                | Details  |
|-------|----------------------------|--|
| 1.    | Name of the project.       | "Omaxe Shubhangan", Sector 4-A, Kassar Road, Bahadurgarh |
| 2.    | Nature of the project.     | Group housing project                                    |
| 3.    | <b>DTCP License no.</b>    | <b>109 of 2008 dated 27.05.2008</b>                      |
|       | Licensed area              | 12.54 Acre   |
|       | Validity Status            | 26.05.2025   |
| 4.    | <b>RERA Registered/not</b> | Registration vide registration no.                       |

*Geeta Rathee*



|     |                                 |   |
|-----|---------------------------------|---|
|     | registered                      | 202 of 2017 dated 31.12.2021                      |
|     | Validity Status                 | 30.06.2023  |
| 5.  | Details of unit.                | Flat No. 402, 4th floor, Tower 17,<br>1280 sq.ft. |
| 6.  | Date of Builder buyer agreement | 07.05.2014  |
| 7.  | Due date of possession          | 07.05.2016  |
| 8.  | Total sale consideration        | ₹ 31,81,029/-                                     |
| 9.  | Amount paid by complainant      | ₹ 29,90,986/-                                     |
| 10. | Offer of possession.            | None  |

### B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a unit in the project of the respondent namely Shubhangan, situated at Bahadurgarh. The total sale consideration of said flat was ₹ 31,81,029- against which the complainant had paid an amount of ₹ 29,90,986/- till the year 2021. A builder buyers agreement was executed between both the parties on 07.05.2014. As per clause 40(a) of the agreement possession of the unit should have been handed over by 07.05.2016. It is alleged by the complainant that respondent has failed to develop the project and deliver possession of the booked unit to the complainant within

stipulated period of time. Feeling aggrieved, complainant has filed present complaint seeking possession of booked unit along with payment of delay interest for delay caused in delivery of possession.

4. Mr. Sudeep Gehlawat, learned counsel for the complainant submitted that as per the buyers agreement respondent should have delivered possession of the booked unit by May 2016. However, more than six years have passed but respondent is yet to develop the project and deliver possession. He reiterated his averments as mentioned in complaint file and sought directions from Authority to direct respondent to deliver possession of the booked unit after completing the project in all respects and obtaining occupation certificate along with payment of delay interest for delay caused in delivery of possession.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

5. Respondent in its written submissions submitted that in present complaint it is the complainant who is at fault for not making timely payments of outstanding balance as per the schedule agreed between both parties. Despite issuing various reminder letters annexed in the reply file, complainant has continuously delayed making payment of instalments. The delay in the project has been partly caused by delayed payment of remittances by allottees including the complainant



herself and partly by the delay caused due to Pandemic Covid -19 .

Therefore, complainant in present complaint is not entitled to any compensation on account of delay.

#### **E. OBSERVATIONS OF THE AUTHORITY**

6. After hearing the submissions of both parties, Authority observes that complainant in present complaint had booked a unit in the project of the respondent in the year 2012 for a total sale consideration of ₹ 31,81,029/- against which the complainant has made a total payment of ₹ 29,90,986/- till the year 2021. As per buyers agreement possession of the unit should have been delivered by the year 2016. However, till date respondent has failed to develop the project and deliver possession of the booked unit. On the other hand, respondent in its written submissions has submitted that it is the complainant who is at fault on account of delayed payment of instalments and is thus not entitled to relief of delay interest.

It is pertinent to mention that in its written submissions respondent has failed to apprise the Authority with regard to the current status of construction of the project and the unit booked by the complainant and also whether the project has received occupation certificate. Authority from a bunch of other complaints pertaining to the same project of the respondent namely "Omaxe Shubhangan " has

come to know that there are 26 towers and the construction of all towers is going. Out of 26 towers in the project, offer for fit-out possession has already been issued to the allottees of Tower 6 to Tower 15. Quia the remaining towers only lift instalment & final finishing works are pending. Occupation certificate for tower 6 to tower 10 has already been applied in the year 2020 but the same is yet to be obtained. The unit booked by the complainant is situated in Tower 17 of the project which is still under construction. It is apparent that the construction of the tower and the project will take time.

#### **F. DECISION OF THE AUTHORITY**

7. Since the complainant wishes to wait for delivery of possession of flat till respondent offers possession after obtaining Occupation Certificate, therefore, Authority deems it fit to issue directions to respondent to make a fresh legal offer for possession of booked unit after obtaining Occupation Certificate. Said offer letter shall be accompanied with statement of accounts showing lawful payables and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority. Complainant shall be entitled to delay interest on account of delay in delivery of possession from deemed date of possession till a legally valid possession will be offered by respondent after obtaining Occupation Certificate from department concerned. As per



calculations made by Accounts Branch, amount payable by the respondent to the complainant on account of interest for delay in handover of possession of the unit up to the date of passing of this order has been worked out to ₹ 18,28,605/- .The Authority orders that upfront payment of ₹ 18,28,605/- will be made to complainant on account of delay caused in offering possession within 90 days and further monthly interest @ ₹ 24,650/- will be paid to complainants by the respondent w.e.f. 15.12.2022 till the date a legally valid offer of possession is made.

8. **Disposed of** in above terms. File be consigned to record room and order be uploaded on the website of the Authority.



DR. GEETA RATHEE SINGH  
[MEMBER]



NADIM AKHTAR  
[MEMBER]