



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	203 of 2022
Date of filing.:	14.02.2022
First date of hearing.:	01.04.2022
Date of decision.:	30.11.2022

Mrs. Rajni Devi
A-25, Tulsi Apartment, Sector-14, Rohini
VERSUS

....COMPLAINANT

Omaxe Ltd.
Shop No 19-B, First Floor, Omaxe Celebration Mall,
Sohna Road, Gurgaon-122001, Haryana

....RESPONDENT

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

Nadim Akhtar **Member**

Date of Hearing: 30.11.2022

Hearing: 3rd

Present :- Ms Neelam Singh, Counsel for complainant
Mr. Ankit Kumar, Proxy counsel for the arguing
Counsel for the respondent.

G. Rathee

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint has been filed by complainants 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.	DTCP License no.	109 of 2008 dated 27.05.2008
	Licensed area	12.54 Acre
	Validity Status	26.05.2025

4.	RERA Registered/not registered	Registration vide registration no. 202 of 2017 dated 31.12.2021
	Validity Status	30.06.2023
5.	Details of unit.	RHBH/Tower-10/Ninth/902, 2215 sq.ft
6.	Date of Builder buyer agreement	13.02..2014
7.	Due date of possession	13.02.2016
8.	Basic sale consideration	₹ 49,06,800/-
9.	Amount paid by complainant	₹ 53,77,428.73/-
10.	Offer of possession.	12.03.2020

B. FACTS OF THE COMPLAINT

3. Complainant in this case had booked a residential apartment in the project of the respondent namely "Omaxe Shubhangan" situated at Bahadurgarh, Haryana for a basic sale consideration of ₹ 49,06,800/- in the year 2012. Vide letter dated 19.12.2013 respondent allotted unit no. RHBH/Tower 10/Ninth/902 having an area of 2215 sq.ft in favour of the complainant, a copy of which is annexed as Annexure C-2. Buyer's agreement was signed between both parties on 13.02.2014, annexed as Annexure C-3 of the complaint file. As per clause 40(a) of the agreement, respondent was to complete the construction of the

project within a period of 18 months + 6 months grace period i.e by 13.02.2016, and delivered possession of the booked unit within the agreed timeline. Complainant has till date made a total payment of ₹ 53,77,428.73/- to the respondent in respect of the booked unit which is 96 % of the total cost of the unit barring the last instalment of ₹ 2,76,163.15/- which becomes payable only at the time of 'offer of possession'. It is alleged by the complainant that in order to extract more money respondent sent a letter dated 12.03.2020 demanding payment of last instalment while offering temporary offer of possession dated 12.03.2020 without obtaining occupation certificate from competent authority,(annexed at page 68 of the complaint file). It is further submitted that the respondent had failed to provide basic facilities such as parking, club , etc and complete the construction of the unit of the complainant. Since complainant was not willing to take possession of an incomplete unit, accordingly, vide letter dated 20.10.2020, she sent a letter communicating the same to the respondent. Despite protest, respondent again issued demand letters dated 13.04.2021 & 15.09.2021 further charging interest on account of delayed remittances.

C. RELIEF SOUGHT

4. Aggrieved by the conduct of the respondent, complainant has filed present complaint seeking possession of the booked unit along with interest on account of delay in offering possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Case was fixed for filing reply. Reply has been filed in Court today by proxy counsel appearing on behalf of arguing counsel for the respondent. Ms Neelam Singh, learned counsel for the complainant stated that she does not wish to wait for receiving a copy of reply and will argue the matter today itself. The arguing counsel is not present in Court today. Since this is a Court of summary proceedings, Authority decides to proceed based on the document only.
6. Respondent in its written submissions submitted that in the present complaint the respondent has already offered possession of the unit to the complainant on 12.03.2020 rather it is the complainant who is at fault on account of default in making payment of balance amount despite issuing several reminder letters. Once possession was offered then the payment of last instalment becomes due which in this case has been offered in the year 2020 itself. Respondent further issued reminder letters dated 13.04.2021 & 15.09.2021 to the complainant for taking possession of the booked unit but complainant failed to do so. It is stated in the reply that the unit is complete in all respects along with all the

facilities. Since possession has already been offered therefore question of paying interest beyond said period does not arise. Therefore, the complainant is not entitled to any relief.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

7. During hearing proceeding today, learned counsel for the complainant reiterated the submissions as stated in the complaint file. She further submitted that as per the buyers agreement respondent should have delivered possession of the booked unit by the year 2016 however, even after six years respondent has failed to deliver possession of the unit. Even the offer of possession dated 12.03.2020 for fit out works was merely for extracting remaining payment since the project is yet to receive occupation certificate and respondent cannot offer possession without obtaining the same. Therefore, she requested that directions be issued to respondent to deliver the possession of the unit after completing all developmental works and obtaining occupation certificate along with payment of delay interest on account of delay in offering possession.

F. JURISDICTION OF THE AUTHORITY

8. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1 Territorial Jurisdiction

As per notification no. 1/92/2017 ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

9. Whether the complainant is entitled to receive delay interest on amount deposited by her in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY

10. After hearing submissions of both parties, Authority observes that complainant had booked a unit in the project of the respondent in the year 2012 for a total sale consideration of ₹ 56,09,800/- against which the complainant has made a payment of ₹ 53,77,428/- which is more than 95 % of the total sale consideration barring the payment of ₹ 2,76,163.15/- which becomes payable only at the time of 'offer of possession'. As per the buyers agreement dated 13.02.2014, respondent should have delivered possession of the unit by the year 2016 ,however, as per the submission of complainant respondent has failed to develop the project and deliver possession. Rather respondent had issued an offer of possession dated 12.03.2020 for fit out works nevertheless, complainant refuted to accept the same since the respondent had failed

to finish the unit and the basic facilities at site and also since the project had not received occupation certificate. On the other hand, respondent in its reply has stated that the unit booked by the complainant is complete in all respect along with all the facilities instead it is the complainant who has failed to come forward to take possession upon payment of balance price. As per the respondent , possession already stands offered to the complainant on 12.03.2020. It is pertinent to mention that in the reply filed, respondent has failed to apprise the Authority with regard to the status of occupation certificate for the project in question. Said offer was not acceptable to the complainant since the respondent is yet to receive occupation certificate from the concerned department. Authority from a separate complaint pertaining to the same project of the respondent is aware of the fact that the project is yet to receive occupation certificate. Also respondent has failed to provide latest photographs of the project and the unit in question in support of its averments that the unit is complete. Since the project is yet to receive an occupation certificate, therefore the offer of possession dated 12.03.2020 cannot be called a valid offer of possession.

I. DECISION OF THE AUTHORITY

11. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under section 34(f):-

In view of aforementioned observations, the respondent is directed to make fresh offer of possession of unit to the complainant after receiving occupation certificate. As per provisions of Section 18 of RERA Act, the complainant is entitled to receive delay interest on account of delay caused in delivery of possession on the payments made from the deemed date possession till the date of offer of possession after obtaining occupation certificate. It is therefore decide that upfront payment of delay interest amounting to ₹ 34,40,774/- calculated in terms of Rule 15 of RERA Rules, 2017 i.e SBI MCLR + 2% (10.60%) for the period ranging from 13.02.2016(deemed date of possession) to 30.11.2023 (date of order) is awarded to the complainant and in addition monthly interest of ₹ 42,836/- shall be payable henceforth up to the date of actual handing over of the possession after obtaining occupation certificate. Authority further orders that the complainant will remain liable to pay balance consideration amount to the respondent as and when a valid offer of possession duly supported

with occupation certificate is made to her. Respondent shall issue a fresh statement of account at the time of offering possession.

12. The delay interest mentioned in aforesaid paragraph is calculated on total amount of ₹ 50,35,422.12/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of Service Tax and EDC/IDC from total paid amount of ₹ 53,77,428/-. The amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

13. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

14. Respondent is directed to pay the complainants an amount of ₹ 34,40,774/- as upfront delay interest as per provisions of the Rule 16

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of HRERA Rules 2017. The monthly interest of ₹ 42,836/- will commence w.e.f. 30.11.2022.

15. Disposed of in above terms. File be consigned to record room.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

