



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

|                               |              |
|-------------------------------|--------------|
| <b>Complaint no.:</b>         | 1390 of 2021 |
| <b>Date of filing:</b>        | 14.12.2021   |
| <b>Date of first hearing:</b> | 15.02.2022   |
| <b>Date of decision:</b>      | 02.03.2023   |

Rishipal,  
S/o Sh. Bharath Singh,  
R/o House no.22,  
VPO Kharak Bura, Tehsil Narwana,  
District Jind, Haryana

....COMPLAINANT(S)

VERSUS

Omaxe Ltd.  
Regd Office: Shop no. 19-B, 1st floor,  
Omaxe Celebration Mall,  
Sohna road, Gurugram - 122001

....RESPONDENT(S)

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Date of Hearing:** 02.03.2023

**Hearing:** 6th

**Present: -** Mr. Kamaljeet Dahiya, Id. counsel for the complainant.  
Mr. M. K. Bhargav, Id. counsel for the respondent through video conference.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 14.12.2021 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:



| S.No. | Particulars                     | Details                                  |
|-------|---------------------------------|--|
| 1.    | Name of the project             | Navodaya Homes<br>Bahadurgarh/Shubhangan |
| 2.    | RERA registered/not registered  | Unregistered                             |
| 5.    | Unit no.                        | T-1/502                                  |
| 6     | Unit area                       | 635 sq. ft.                              |
| 7.    | Date of provisional allotment   | 13.08.2015 (Annexure C-6)                |
| 8.    | Date of builder buyer agreement | Not executed                             |
| 9.    | Due date of possession          | Not mentioned                            |
| 10.   | Basic Sales Price               | ₹14,73,200/-                             |
| 11.   | Amount paid by complainants     | ₹15,76,575/- (Receipts)                  |
| 11.   | Offer of possession             | Not made                                 |

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that initially the unit was booked by Mr. Bijender Kumar (Original Allottee) in the project of the respondent namely 'Navodaya Homes Bahadurgarh/Shubhangan' situated at Sector-4 A, Kassar Road, Bahadurgarh, Haryana on 10.05.2012. Complainant purchased the booking rights in respect of unit from the original allottee and got 100% rights and interest with respect to the unit endorsed in his favour by



executing a request form dated 19.11.2012. The same was acknowledged by the respondent-company. Copy of the request form is annexed as Annexure C-2.

4. Respondent intimated the complainant vide letter dated 10.08.2015 regarding starting of process of provisional allotment and the complainant had to visit the office of the respondent before 14th August , 2015 for submission of preference of the unit and get the provisional letter of the unit in his favour. Copy of the letter dated 10.08.2015 is annexed as Annexure C-5. Thereafter Flat no. T-1/502 admeasuring 635 sq. ft. was provisionally allotted to complainant vide allotment letter dated 13.08.2015. Copy of the allotment letter is annexed as Annexure C-6. Payment plan opted by the complainant was the Construction Linked Plan. Neither Builder Buyer Agreement executed by respondent, nor respondent intimated any deemed date for delivery of possession of allotted unit. Initially the basic sale price of the unit was ₹14,73,200/-
5. Complainant mentioned in his complaint that the payment plan offered by the respondent was Construction Linked Installment Plan i.e. the complainant was supposed to pay as per the construction and development work to be carried on by the respondent, of the allotted Unit. It implies that complainant would be required to pay only part of sales consideration as per agreed



stages of construction, provided that such stage wise demand should be raised by respondent upon furnishing credible evidence of completing various stages of construction to the satisfaction of the complainant. However, all demands letter were issued by respondent without any clarification of the stage of construction. Complainant has been issued threatening letters to impose heavy interest in case of delay in making payments. Thus, the respondent company has not only collected the money illegally rather such money is paid due to duress and threat, which is patently against the provisions of RERA Act, 2016.

6. Initially the basic sale price of the unit was ₹14,73,200/-. However, it was revised to ₹15,57,043/- including EDC and IDC vide demand letter dated 15.03.2021. Against which the complainant on the demand of the respondent had made payment of ₹ 15,76,575/- which is the total amount of Basic Sale Price of the flat/unit in question. The copy of demand letter dated 15.03.2021 is annexed herewith as Annexure C-9 and copies of various receipt of payments are annexed herewith as Annexure C-10(Colly). However the respondent has till date neither executed any Buyer's Agreement nor intimated the status of construction/tentative date of possession to the Complainant even after delay of nine years from the date of booking. As such it can be construed that the respondent has not



completed the construction of the said floor and has failed to offer the possession of the floor within reasonable time. It is pertinent to mention here that the complainant vide letter dated 19.08.2021 requested the respondent to handover the possession of the flat allotted to him along with delay possession interest, as the delay of more than nine years had been caused since the booking of the said flat or to refund the entire amount paid by the complainant with 18% interest thereon. However the respondent completely ignored the said letter of the complainant and did not give any reply to it till date. The copy of letter dated 19.08.2021 is annexed herewith as Annexure C-11

### **C. RELIEF SOUGHT**

7. The complainant in his complaint has sought following reliefs:
- (i) To give necessary directions to the respondent to hand over the possession to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interests per the provisions of Sec. 18 and Sec 19(4) of the RERA Act of 2016.
  - (ii) To set aside or waive off the arbitrary charges imposed by the respondent in demand letter dated 15.03.2021)
  - (iii) To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act.



- (iv) To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Section 12,13,14 and Sec. 16 of RERA Act.
- (v) To direct the respondent to refund the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules,2017.
- (vi) To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instances,connivance, acquiescence,neglect any of the offences has been committed as mentioned in Sec. 69 of RERA Act,2016 to be read with HRERA Rules, 2017.
- (viii) To issue directions to pay the cost of litigation.
- (ix) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of the complaint.

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

Learned counsel for the respondent filed detailed reply on 12.07.2022 pleading therein:

- 8. That the complaint deserves to be dismissed, as the complainant himself is defaulter in the present case, as this fact has been concealed from this Hon'ble Authority. It is submitted that the complainant delayed each and every installment. Since he did not make the payments timely, he was issued



bunch of reminders, and even letters were issued to him that if he did not come forward to pay the amount pending against him, then the same will result in cancellation of the unit and forfeiture of the amount paid by him. However, despite the same, the complainant did not bother to make payment timely. It is submitted that since the very beginning, the complainant did not stick to the payment schedule, timely, and thus, he was issued approximately 38 reminder and demand letters ranging from 01.09.2016 to 15.03.2021, copies of which, alongwith postal proofs, are appended herewith as Annexure R-1 to Annexure R-38.

9. Complaint also deserves to be dismissed, on account of concealment of material facts. He did not disclose that the basic sales price of the unit stood revised. The details qua cost of the unit and other expenses, alongwith the details of payments made by the complainant so far, are attached herewith in the shape of statement of account which is annexed as Annexure R-39. As BSP has been revised, a substantial amount is pending against the complainant.
10. Further, complainant has made a wrong allegation that he was not informed about the status of the project. Rather, perusal of Annexure R-1 to R-38 would reveal that stage of construction was already being informed to the complainant.





**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

11. During oral arguments, ld. counsel for the complainant submitted that in the present matter, booking was done in the year 2012. No Flat Buyer Agreement was executed in the case. The initial basic sale price of the unit as per the price list dated 05.04.2012 was ₹ 14,73,200/-. The basic sales price has been changed by respondents several times which is evident through demand letter dated 15.03.2021, however, admittedly the complainant agreed to pay ₹ 14,73,200/- at the time of the allotment. Therefore, the basic sale price of the unit is ₹ 14,73,200/- against which the complainant has paid an amount of ₹ 15,76,575/- which is more than 100% of the basic sales price. However, till date no offer of possession has been given by the respondent to complainant.
12. With respect to allegation of respondent that complainant is a defaulter and did not make timely payment, counsel for complainant submitted that complainant opted for a construction linked plan which means that demands had to be raised in proportion with the stage of construction. However, respondent issued numerous demand letters without reflecting the status of construction of the unit. Despite this, complainant has made payment of the entire basic sales price and there is no default on the part of complainant.



Counsel for complainant prayed that respondent be directed to issue offer of possession to complainant along with delay.

Learned counsel for the respondent reiterated the pleadings made in the reply submitted on behalf of the respondent.

#### **E. JURISDICTION OF THE AUTHORITY**

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

##### **E.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 the entire Haryana except Gurugram District for all purposes with offices situated in Panchkula. In the present case the project in question is situated within the planning area Jhajjar district, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

##### **E.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.

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.

#### **F. ISSUES FOR ADJUDICATION**

14. Whether the complainant is entitled to possession of the booked unit along with interest in terms of Section 18 of Act of 2016?

#### **II. OBSERVATIONS AND DECISION OF THE AUTHORITY**

15. Factual matrix of the case reveals that a unit was booked in the year 2012 by Mr. Brijender Kumar, original allottee by making a payment of ₹ 2,00,000/-. Copy of the receipt is annexed as Annexure C-1. Complainant purchased the unit from Mr. Brijender Kumar and got it transferred in his favour by



executing a request form. Copy of the request form is annexed as Annexure C-2. Thereafter unit, T-1/502 admeasuring 635 sq. ft. was allotted to complainant vide allotment letter dated 13.08.2015. Copy of the allotment letter is annexed as Annexure C-6.

16. There are two issues at hand, firstly what is the deemed date of possession in the matter? Secondly, whether the complainant is entitled to relief of possession along with delayed interest or not? Authority after taking into consideration written and oral submissions of both the parties observes and orders as follows:

- (i) Admittedly Builder Buyer Agreement has not been executed between the parties. An allotment letter dated 13.08.2015 was issued by respondent. Authority observes that it would be fair and just that deemed date of possession should be reckoned as three years from the date of issuance of allotment letter. Therefore, deemed date of possession in this case works out to be 13.08.2018 i.e., three years from allotment.
- (ii) With respect to allegation of respondent that complainant is a defaulter and did not make the payments on time. To substantiate the same respondent has annexed various demand letters ranging from 01.09.2016 to 15.03.2021, copies of which, alongwith postal proofs,



are appended as Annexure R-1 to Annexure R-38 with reply of respondent. Authority observes that complainant opted for construction linked plan which implies that demands have to be raised by the respondent after informing complainant regarding the status of construction of the unit. Perusal of the demand letters show that respondent has not mentioned the status of construction of the unit allotted to complainant while raising demands. Counsel for the complainant argued that respondent has changed the BSP of the unit many times without informing complainant. Admittedly complainant agreed to pay ₹ 2320/- per sq. ft. as per the price list. Authority hereby rely on the price list to ascertain the basic sale price (ASP) Therefore, the BSP comes out to ₹ 14,73,200/- (₹2330 x 635 sq. ft.) against which an amount of ₹ 15,76,575/- was paid by the complainant as is evident from copy of receipts annexed as Annexure C-9 (polly) with the complaint file which means complainant has already paid more than 100% of the BSP by March 2021. However, no offer of possession is given by respondent to complainant. In these circumstances, the complainant deserves a valid offer of possession after the project has received occupation certificate.



(iii) Since the complainant wishes to wait for delivery of possession of the unit till respondent offers possession after obtaining occupation certificate, therefore, Authority deems it fit to direct respondent to make a legal offer of possession of booked unit after obtaining occupation certificate to complainant. Said offer letter shall be accompanied with a statement of account showing lawful payables and receivable along with justification. While issuing such statements, respondents shall follow the principles laid down by Authority. Complainant shall be entitled to delay interest on account of delay in delivery of possession from deemed date of possession i.e., 13.08.2018 till a legally valid offer will be made by respondent after obtaining occupation certificate. As per calculation made by accounts branch, amount payable by respondent to the complainant on account of interest for delay in offering possession of the unit upto the date of passing of this order has been worked out to ₹ 7,10,058/- (As per receipts annexed by complainant ₹ 7,16,920/- was paid by complainant before deemed date of possession i.e., 13.08.2018 and ₹ 8,59,655/- was paid by complainant after 13.08.2018 vide receipts dated 17.10.2018 (₹ 6,42,055/-), 27.09.2019 (₹ 89,600/-) and 17.03.2021 (₹ 1,28,000/-) (Annexure



C-10); therefore, delay interest has been calculated on ₹ 7,16,920/- from 13.08.2018 and on ₹ 8,59,655/- from respective date of receipts). The Authority orders the upfront payment of ₹ 7,10,058/- which has be calculated @ 10.70% (SBI MCRL + 2%) as per Rule 15 of the HRERA Rules, 2017. Further, monthly interest of ₹ 14,790/- will be paid to complainant by respondent till the actual handing over of possession.

17. With respect to other reliefs except the relief of refund of paid amount with interest sought by complainant in his complaint, it is observed that Id. counsel for complainant did not argue on any of them at the time of hearing. Moreover, perusal of the file shows that no documentary proofs/evidence has been placed on record by complainant to substantiate the claims made in the relief clause of the complaint.

#### **I. DIRECTIONS OF THE AUTHORITY**

18. Respondent is directed to make the entire payment of ₹ 7,10,058/- within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.



19. The complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading the order on the website of the Authority.

*Geeta Rathee*

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

*Nadim Akhtar*

.....  
NADIM AKHTAR  
[MEMBER]

