



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1062 of 2018
Date of filing:	29.11.2018
Date of first hearing:	16.01.2019
Date of decision:	28.02.2023

Pinki Sharma,
W/o Sh. Neeraj Kumar,
R/o House no. 1450/31,
Kamla Nagar near old housing board,
Rohtak - 124001

....COMPLAINANT(S)

VERSUS

M/s Omaxe Ltd.
Regd Office: Shop no. 19-b, 1st floor,
Omaxe celebration,
Sohna road,
Gurugram - 122001

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Date of Hearing: 28.02.2023

Hearing: 14th

Present: - Mr. Neeraj Kumar, representative of the complainant

None for the respondent

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint dated 31.01.2020 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 table:

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S.No.	Particulars	Details
1.	Name of the project	Omaxe Shubhangan, Sector 4 A, Bahadurgarh, Jhajjar
2.	RERA registered/not registered	Registered
5.	Unit no.	601, 6th floor, Tower no. 12
6	Unit area	2215 sq. ft.
7.	Date of allotment	03.05.2018
8.	Date of builder buyer agreement	01.02.2014
9.	Due date of possession	01.02.2016
10.	Total sales consideration	₹56,09,800/-
11.	Amount paid by complainants	₹55,58,788/-
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants booked a residential unit in the project of the respondent namely 'Omaxe Shubhangan' situated at Jhajjar on 24.12.2012. Builder Buyer Agreement was executed between the parties on 01.02.2014. As per clause 40 (a) of Builder Buyer Agreement, respondent agreed to deliver possession within 18 months from the date of execution of agreement with an additional period of 6 months. The deemed date of possession comes to 01.02.2016 (24 months - 18 + 6 months). The total sale



consideration of the unit was ₹ 56,09,800/-, against which an amount of ₹55,58,788/- had been paid by the complainant to the respondent by the year 2015. It has been alleged by complainant that despite receiving approximately 95% of the total sales consideration, respondent has failed to complete construction of the project and 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.

C. RELIEF SOUGHT

4. The complainants in her complaint has sought following reliefs:
- (i) Direct the respondents to refund the amount of Rs. 55,58,788/- including GST paid alongwith interest @ 18% per annum on compounded rate from the date of booking
 - (ii) Any other, further or alternative relief for which the complainants herein may be found entitled for benefit be also granted in favour of the complainants and against the respondent in accordance with law.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.11.2022 pleading therein:

5. Complainant had booked a flat after paying Rs 4,50,000/ on 24.12.2012 and a unit measuring 2215 sq ft @ Rs 2215/- in a project of respondent namely 'Shubhangan'. Allotment of flat in RHBH/Tower-12/601 was made in favor of Pinki Sharma on 19.12.2013. Later, Pinki Sharma made a request to add name of Omwati along with Pinki Sharma in allotment letter. Copy of application form for addition of name of Omwati is annexed as Annexure R-1 with the reply of respondent. The agreement was executed on 1.02.2014 and possession was to be endeavored to be handed over within 24 months (18 months + 6 months). The copy of allotment letter/buyer agreement dated 01.02.2014 is annexed as Annexure R-2 (colly). Respondents further submitted that the complainant is a chronic defaulter and she has not paid the due amounts/installments. Respondent has sent numerous reminders/ letters, starting from 2013 till September 2017, asking the complainant to make the due payment of installments as well as delayed interest on it but the complainant did not pay any heed and never made any payment. Copies of letters/reminders sent to applicant/complainant along with receipts are annexed as Annexure R-3 (Colly). That the respondents waited patiently for



nearly two years for the complainant to become regular and make payments to them. However the complainant never came forward to pay any of due installments and the respondent could have cancelled allotment and forfeit money but respondent did not cancel the unit. In May 2018, a letter was sent to complainant showing the pictures of the flat and it was told to the complainant that possession would be handed over within 1 year as flat is complete and after completion of internal works the flat shall be handed over by May 2019.

E. JURISDICTION OF THE AUTHORITY

6. 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.

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.



F. ISSUES FOR ADJUDICATION

7. Whether the complainant is entitled to refund of the amount deposited by her along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

8. Captioned complaint was taken up with the bunch of other similar complaints for adjudication with lead case no. 802 of 2019. On hearing dated 26.07.2022 and 11.10.2022, case was heard at length and after hearing arguments of both the parties Authority granted relief of refund along with interest as per Rule -15 off HRERA Rules, 2017. Some of the relevant paragraphs of the order dated 26.07.2022 and 11.10.2022 are reproduced below:

(a) *Order dated 26.07.2022*

“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"

(b) Order dated 11.10.2022

"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.

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 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 within 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.”


9. As per the directions of the Authority, the complainant submitted receipts of payment in the office of Authority on 06.02.2023 whereby she has annexed receipts of total payment made to respondent amounting to ₹55,58,788/-. Authority here observes that the complainants have paid a total sum of ₹55,58,788/- to the respondent. Therefore, respondent shall refund ₹55,58,788/- along with interest as per Rule 15 of HRERA Rules, 2017. Interest is calculated on the amount of ₹55,58,788/- from the date of receipts till the date of the order i.e., 28.02.2023 @ SBI MCLR + 2% i.e., 10.70% which comes out to be ₹48,62,937/- Total amount to be refunded comes out to ₹1,04,21,725/-.



10. It is being made clear here that as per the allotment letter, unit was allotted in favour of Pinki Sharma w/o Neeraj Kumar and Omwati w/o Ram Phal jointly, therefore, the relief granted by way of this order shall be divided in equal proportion between these two co-allottee as per their inter-se agreement. Respondent is directed to act accordingly.

10. **I. DIRECTIONS OF THE AUTHORITY**

10. Respondent is directed to make the entire payment of ₹1,04,21,725/- within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.
11. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]