



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision: 18.10.2023

Name of Builder	Omaxe Ltd.
Project Name	Omaxe Shubhangan; Village Kassar, Bahadurgarh, Haryana

Sr. No.	Complaint No.	Complainant
1.	2522 of 2022	Ranjana Mittal W/o Sh. Vipin Mittal R/o E-32 Gali no. 4, Hardev Nagar Jharoda Mazra Burari South Delhi- 110084
2.	2525 of 2022	Neelam Khurana W/o Sh. Ramesh R/o 135/83 Medical Campus Rohtak- 124001
3.	2527 of 2022	Surender Kumar S/o Sh. Kanwar Singh R/o 51/13J Medical Campus Rohtak- 124001
4.	2532 of 2022	Neelam Khurana W/o Sh. Ramesh R/o 135/83 Medical Campus Rohtak- 124001

VERSUS

Omaxe Ltd.

7, Local shopping centre

Kalkaji

New Delhi 110019

....RESPONDENT

Rathore

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

Present: - Mr. Sudeep Singh Gahlawat, counsel for the complainants through video conference (in captioned complaints)

 Mr. Munish Gupta, counsel for the respondent through video conference (in captioned complaints)

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Above captioned complaints have been filed on 21.09.2022 by the 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. These complaints are taken up together as facts and grievances of all the complaints are identical and pertains to the same project of the respondent, i.e., Omaxe Shubhangan situated at Village Kassar, Bahadurgarh, Haryana". Therefore, Authority by passing a common order shall dispose of all these captioned complaints. **Complaint No.**


Rathee

2522 of 2022 titled Ranjana Mittal versus Omaxe Ltd. has been taken as a lead case for disposal of captioned matters.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the units booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

(i) Complaint no. 2522 of 2022

S.No.	Particulars	Details
1.	Name of the project	Omaxe Shubhangan situated at Village Kassar, Bahadurgarh, Haryana
2.	Date of application submitted by the original applicant	08.05.2012
3.	Unit No. and area	Flat no. 405, Tower No. 4 having area 635 sq. ft
4.	Date of allotment	13.08.2015
5.	Date of builder buyer agreement	Not executed
6.	Basic Sale Price/Total sales consideration	₹15,92,167/-
7.	Amount paid by complainant	₹15,53,451.45/-
8.	Offer of possession	Not given till date.
9.	Date of transfer in favour of the complainant	29.12.2012



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

4. Facts of the present complaint are that the original allottee booked a residential flat in the respondent's project "Omaxe Shubhangam", sector 4A Bahadurgarh, Haryana after paying an amount of Rs. 2,00,000/-. Said booking was transferred in the name of second allottee Ms. Santosh Devi in the year 2012. Said flat was finally transferred in the name of Ms. Ranjana Mittal on 29.12.2012.
5. Respondent on 13.08.2015 sent a letter to the complainant and allotted flat no. T-4/405 admeasuring 635 sq. ft. Builder buyer agreement has not been executed between the parties. Total consideration of the said flat was Rs. 15,92,167/- against which complainant has paid an amount of Rs. 15,53,451.45/-.
6. That even after passing a period of 10 years from the date of booking, possession of the flat has not been handed over to the complainant. Reference is made to complaint no. 1080 of 2019 titled as Rahul v/s Omaxe Ltd for deciding the present complaint.
7. Respondent could not develop the project in time and handover physical possession of the residential flat with in time as stipulated in provisional allotment letter i.e. upto 14.08.2017, thus the complainant is entitled for delay possession interest as per Rule 15 of RERA Rules, 2017.


Rathee

C. RELIEF SOUGHT

8. The complainant in her complaint has sought following reliefs:

- (i) In exercise of powers under Section 35, direct the Respondent to place on record all statutory approvals and sanctions of the project.
- (ii) To pay delay possession interest over the payment deposited by the complainant in terms of rule 15 of RERA Rules, 2017 i.e. SBI MCLR + 2% w.e.f. 14th August 2017 to actual physical date of possession.
- (iii) To direct the respondent to handover the possession of residential flat as soon as possible.
- (iv) To direct the respondent to execute builder buyer agreement in favour of complainant
- (v) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed a detailed reply on 09.05.2023 pleading therein:

- (i) That the complainant has misdirected herself in filing the present complaint before this Hon'ble Authority, as the reliefs being claimed by the complainant, are illegal, misconceived and erroneous.



(ii) That unit in question was booked by Amit Mehta after submitting the application form in the year 2012, from whom Santosh Devi got transferred the rights qua the unit in his favour. Complainant stepped into the shoes of the original allottee in December 2012.

(iii) That at the time of booking gold coin of 10 gm worth Rs. 27,500/- was given to original allottee. Provisional allotment was done in favor of the complainant on 13.08.2015 but it was subject to conditions mentioned in the application form.

(iv) Respondent sent a letter dated 28.06.2019 requesting the complainant for execution of builder buyer agreement, Several telephonic calls were also made to the complainant for execution of the agreement, but complainant did not come forward for execution of builder buyer agreement.

(v) That complaint is barred by limitation because the last payment was made by the complainant in the year 2018 as per complainant's own version. In the meanwhile, complainant has repeatedly defaulted in making payment for which several reminder letters ranging from 07.09.2015 to 01.09.2018 were sent to her.

(vi) That the complaint deserves to be dismissed, as no cause of action has arisen in favour of complainant to file the present complaint.

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



10. During oral arguments both parties reiterated their arguments as were submitted in writing.

F. ISSUES FOR ADJUDICATION

11. Whether the complainant is entitled to get possession of her booked flat along with delayed interest in terms of Section 18 of RERA Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

12. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) Respondent in his reply has taken a plea that the reliefs being claimed by the complainant, are illegal, misconceived and erroneous. In this regard it has been observed that the complainant has filed present complaint seeking various reliefs as stated above in para 8 of this order under section 31 of RERA Act, 2016. As per said provision any aggrieved person, which in this case is allottee-complainant, can file complaint for violations of provisions of Act, rules and regulations. Respondent nowhere in reply has denied the fact that complainant is allottee of unit in question, i.e., flat no. 405 allotted by the respondent to the complainant vide allotment letter dated 13.08.2015. Moreover, no specific



arguments/justification has been mentioned in reply to prove that as to how the reliefs sought by complainant are illegal and misconceived. The issues involved about violations of provisions of Act, Rules and Regulations by the builder are to be adjudicated by the Authority after hearing the case on merits. So, the respondent cannot simply deny the reliefs sought by complainant stating them erroneous, illegal and misconceived. It is pertinent to mention here that by virtue of Section 18 of the RERA Act, 2016, the complainant is well within her rights to seek the relief of possession along with delay interest from the Authority. In view of aforesaid discussions, there is no merit in the plea of respondent that reliefs claimed by respondent are illegal, erroneous and misconceived.

- (ii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Limitation Act, 1963 deals with applicability to courts and not tribunals. Further, RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963 would not be



applicable to the proceedings under the Real Estate (Regulation and Development) Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. Further, fact remains that promoter has till date failed to fulfil his obligations of delivery of possession of unit to complainant because of which the cause of action is re-occurring.

13. Admitted facts of this complaint are that the original allottee booked a flat in the respondent's project "Omaxe Shubhangan" Sector 4A Bahadurgarh, Haryana after paying an amount of Rs. 2,00,000/- on 2012, said booking of flat was transferred in the name of second allottee in the year 2012 and finally the booking of said flat was transferred in the name of complainant on 29.12.2012. On 13.08.2015, complainant was allotted flat no. T-4/405 admeasuring 635 sq. ft in the respondent's project and she has paid an amount of Rs. 15,53,451.45/-. Complainant's grievance is that the respondent has neither executed builder buyer agreement for unit nor offered possession of the said flat till date. In respect of execution of builder buyer agreement, respondent's stand is that it is the complainant who has not come forward to execute the builder buyer agreement despite telephonic calls. Further respondent's stand is that it had sent various reminders to the complainant for payment of remaining outstanding dues but complainant ignored those demand letters.



- (i) Firstly, it has to be ascertained whether the complainant who is a subsequent allottee, without executing the builder buyer agreement, is entitled to relief of possession along with interest or not. To adjudicate this issue, reference is made to the statement of accounts annexed at page 18 of the complaint. It is clear from the statement of accounts that the respondent had accepted the original allottee as an allottee and after receipt of booking amount had allotted flat no. 405 admeasuring 635 sq. ft. @ 15,32,167/- basic sales price. Later respondent had also accepted payment of Rs. 2,00,000/- from the original allottee, i.e, predecessor of the complainant and Rs. 13,53,451.45/- from complainant and had issued receipts for the same clearly shows that respondent had recognised allotment rights of the complainant. Acceptance of multiple payments and subsequent transfer by way of endorsement in favour of the complainant leaves no doubt about the fact that the complainant who stepped into the shoes of the original allottee on 29.12.2012 has rights and liabilities in the allotted flat. If argument of respondent is accepted that there was no “agreement to sale” between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment of ₹ 15,53,451.45/- ,i.e., more than ninety five percent of the basic

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sale price and issued receipts to predecessors of the complainant for 'nothing in return', which is impossible and hard to believe. Mere fact that a document with a nomenclature builder buyer agreement was not signed by the original allottee does not mean that he was not an allottee of the respondent. Respondent after receipt of payment to the tune of Rs 15,53,451/- and allotment of flat no. 405 to complainant admeasuring 635 sq. fts in its project- Omaxe Shubhangan as mentioned in the statement of accounts, cannot at this stage take a plea that it is the complainant who has not executed the builder buyer agreement. Accepting the payment towards allotment of flat shows there was a meeting of minds of both parties on the point that the promoter will give possession in the project developed by respondent in Bahadurgarh of a specified allotted flat. It is pertinent to mention here that as per agreement for sale as provided under section 2(c) of the RERA Act, 2016, agreement for sale need not specifically be in the form of written builder buyer agreement. It simply provides that it is an agreement between promoter and allottee. Such agreement may be written or oral. Therefore the plea taken by the respondent that due to non-execution of the builder buyer agreement complainant is not entitled to possession of his allotted flat is rejected.



(v) Second plea taken by the respondent is that respondent issued various reminders to the complainant and it is the complainant who has defaulted in payments. In this regard it is observed that against the basic sales price of Rs. 15,32,167/-, the complainant has already paid an amount of Rs. 15,53,451.45/- that is more than the basic sales price. Respondent has not disclosed anything with respect to status of construction or the position of occupation certificate with respect to complainant's booked flat. Complainant has already made payment of more than basic sales price of the flat. In these circumstances respondent cannot be allowed to take a plea that complainant has defaulted in making payments when it is the respondent who has also not offered possession of the booked flat to the complainant and is also not disclosing the status of construction of the project. In the present case, the complainant does not want to withdraw from the project and wants to continue with the project. In these circumstances, complainant is well within its right to seek possession of his booked unit along with delay interest.

(vi) The third issue which needs to be adjudicated in this case is that from which date the complainant will be entitled to delay interest in the present case. In such cases where the exact date

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for handing over possession cannot be ascertained, 3 years period has been held as reasonable time by the Hon'ble Apex Court in the case reported as **2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** Accordingly, the respondent was to handover the possession of the flat by 13.08.2018 ,i.e., 3 years from date of allotment 13.08.2015.

13. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date ,i.e, 13.08.2018 up to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.



Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”..”



14. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 20.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
15. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 ,i.e, at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from from the due date of possession ,i.e, 13.08.2018 till the date of a valid offer of possession.
16. Authority has got calculated the interest on total paid amount from due date of possession till the date of this order as per detail given in the table below:

Sr. No.	Complaint No.	Amount Paid	Due date of possession	Delay interest accrued till 18.10.2023	Monthly Interest
1	2522 of 2022	₹15,53,451.45/-	13.08.2018	₹8,65,461/-	₹13,726/-
2	2525 of 2022	₹15,46,073.12/-	10.08.2018	₹8,62,720/-	₹13,661/-
3	2527 of 2022	₹15,53,127/-	13.08.2018	₹8,65,462/-	₹13,723/-
4	2532 of 2022	₹16,08,960.6/-	20.08.2018	₹8,96,590/-	₹14,216/-



17. Complainant has neither pressed upon nor argued for relief no. i.

18. Hence, the Authority hereby passes this order and issue 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) of the Act of 2016:

(i) Respondent is directed to pay upfront delay interest of ₹8,65,461/- (till date of order i.e 18.10.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest ₹13,726/- till the offer of possession after receipt of occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

19. **Disposed of.** File be consigned to the record room after uploading of the order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



.....
DR. GEETA RATHEE SINGH
[MEMBER]