



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2524 of 2022
Date of filing:	21.09.2022
Date of first hearing:	09.02.2023
Date of decision:	18.10.2023

Shivali Sareen
W/o Sameer Khurana
R/o 13J/83, Medical Campus
Rohtak, Haryana-124001

....COMPLAINANT

VERSUS

M/s Omaxe Ltd.
7, Local shopping centre
Kalkaji
New Delhi 110019

....RESPONDENT

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

Present: - Mr. Sudeep Singh Gahlawat, counsel for the complainant
 through video conference.
 Mr. Munish Gupta, counsel for the respondent through
 video conference.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Captioned complaint has been filed on 21.09.2022 by the 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 RERA Act of 2016 or the Rules and Regulations of 2017 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.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

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	24.08.2012
3.	Unit No. and area	Flat no. 502, 5 th floor, Tower No. 20 having area measuring 1280 sq. ft
4.	Date of builder buyer agreement	25.02.2014

5.	Deemed date of possession	25.02.2016
6.	Basic Sale Price/Total sales consideration	₹28,01,029.20/-
7.	Amount paid by the complainant	₹30,61,027/-
8.	Offer of possession	Not offered
9.	Date of transfer in favour of the complainant	02.01.2016

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 Shubhangan", Sector 4A Bahadurgarh, Haryana after paying an amount of ₹3,00,000/- on 24.08.2012. Said booking was transferred in the name of second allottee Ms. Ranjana Mittal on 05.03.2013. Flat buyer agreement was executed between the second allottee Ms. Ranjana Mittal and the respondent on 25.02.2014. Basic sales price of the said flat was Rs. 28,01,029.20/- against which an amount of Rs. 30,61,027/- has already been paid to the respondent. Clause 40(a) of the Builder Buyer Agreement (BBA) stipulates that respondent was under an obligation to handover the possession of the flat to the allottee within a period of 18 months with grace period of 180 days

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from the date of execution of flat buyer agreement. Deemed date of possession works out to be 25.02.2016 but the possession of the said flat has not been given to the complainant till date. Said flat was transferred in the name of complainant on 02.01.2016.

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 the 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 Builder Buyer Agreement(BBA) i.e., upto 25.02.2016, thus the complainant is entitled for delay possession interest as per Rule 15 of RERA Rules, 2017.

C. RELIEFS 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 11.08.2023 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 originally booked by Sh. Om Prakash Chawla after submitting the application form in the year 2012, from whom Ms. Ranjana Mittal got transferred the rights qua the unit in her favour. Flat buyer agreement was executed between Ms. Ranjana Mittal and the respondent on 25.02.2014. Complainant stepped into the shoes of the original allottee in Januray, 2016.

(iii) That complainant was issued a credit note worth of Rs. 27,500/- and GST benefits of Rs. 9571/- was also given to the complainant.



(iv) 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 03.02.2014 to 02.08.2018 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 the parties, Authority observes as follows:

(i) Respondent in his reply dated 10.08.2023 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 the provisions of the said section any aggrieved person, which in this case is allottee-complainant, can file a complaint for violations of provisions of Act, rules and regulations. Respondent nowhere in reply has denied the fact that complainant is allottee of the unit in question, i.e., Flat No. 502, fifth floor, Tower 20, Omaxe Shubhangan, Bahadurgarh allotted by the respondent to the complainant and builder buyer agreement executed on 25.02.2014. Moreover, no specific arguments/justifications have been mentioned in reply to prove 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. Thus, 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 the Hon'ble 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 the complainant because of which the cause of action is re-occurring.
- (iii) Admitted facts of this complaint are that the the original allottee booked a residential flat in the respondent's project "Omaxe Shubhangar", sector 4A, Bahadurgarh, Haryana after paying an amount of Rs. 3,00,000/- on 24.08.2012. Said booking was transferred in the name of second allottee Ms. Ranjana Mittal on


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05.03.2013. Flat buyer agreement was executed between the second allottee Ms. Ranjana Mittal and the respondent on 25.02.2014. Basic sales price of the said flat was Rs. 28,01,029.20/- against which an amount of Rs. 30,61,027/- has already been paid to the respondent. Said flat was transferred in the name of complainant on 02.01.2016. As per clause 40(a) of the BBA, respondent was under an obligation to complete the development of the unit within 18 months from the date of signing of the agreement or within an extended period of 6 months. Complainant's grievance is that the respondent has not offered possession even after lapse of 10 years from the date of booking of the flat.

(iv) Respondent has taken a plea 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. 28,01,029.20/-, the complainant has already paid an amount of Rs. 31,61,027/- that is more than the basic sales price. Respondent has not disclosed anything with respect to status of construction or 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



definition of term 'interest' is defined under Section 2(z) 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. 18.10.2023 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, 25.02.2016 till the date of a valid offer of possession.

16. Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in Appeal no. 619 of 2021 titled as “Parminder Singh Sohal” versus BPTP Ltd. The details of amounts paid by the complainant and delay interest calculated on the said amounts are shown in the following table: -



Amount paid by complainant	Upfront delay interest calculated by Authority till 18.10.2023	Further monthly interest
₹30,61,027/-	₹24,06,818/-	₹27,046/-

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 ₹24,06,818/- (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 @ ₹27,046/- 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

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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]