



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	464 of 2023
Date of filing:	21.02.2023
First date of hearing:	25.04.2023
Date of decision:	16.12.2024

Mr. Rajnish alias Rajnish Gupta,
R/o HNo. 251, SFS Flats, Ashok Vihar, North West,
Delhi-110052

....COMPLAINANT

VERSUS

M/s Omaxe Ltd.
(through its Managing Director and other Directors)
Registered Office:-
Shop No. 19B, First Floor, Omaxe Celebration Mall,
Sohna Road, Gurgaon-122001

Corporate Office:-
Omaxe House, 7, Local Shopping Centre,
Kalkaji, New Delhi-110019

...RESPONDENT

CORAM: **Nadim Akhtar**
 Chander Shekhar

Member
Member

Present: - Ms. Yamini Naryal, Id. Counsel for the complainant through VC.
Mr.Arjun Sharma, Id. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 21.02.2023 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 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 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	"Allure Tower", Omaxe City, Sonipat, Haryana.
2.	Name of promoter	M/s Omaxe Ltd.
3.	Date of booking	09.09.2005



4.	Unit No.	901, 9 th Floor
5.	Unit area	Not mentioned in the pleadings
6.	Date of allotment	13.09.2005 as per complainant.
7.	Date of builder buyer agreement	Not executed
8.	Basic Sale Price	₹15,13,200/- as per annexure P-4.
9.	Amount paid by complainant	₹ 5,00,500/-
10.	Due date of possession	Cannot be ascertained as BBA not executed
11.	Offer of possession	Not given till date

B. FACTS AS STATED IN THE COMPLAINT

3. That the complainant, i.e., Mr. Rajnish booked a residential unit by depositing advance booking amount of ₹3,00,000/- vide instrument bearing no. 284569 drawn of the Karur Vysya Bank, New Delhi-110035, dated 09.09.2005 which is annexed as Annexure –P/1 to the complaint.
4. That the respondent sent a notice to the complainant on 19.04.2006 to deposit a sum of 2,00,500/- by 29.04.2006 for getting assurance and interest in allotment of property with a condition that if the respondent did not receive the said overdue amount then the advance registration stands cancelled and complainant will not entitled to allotment of any property and the registration amount will be refunded to the complainant. A copy of



- said notice dated 19.04.2006 is said to be annexed as annexure-P/2. However, the same has not been attached by the complainant.
5. That the complainant submitted a cheque of an amount of ₹2,00,500/- vide instrument no. 284573 dated 08.04.2006 which is annexed as annexure P/3. Vide receipt dated 13.09.2005, the respondent allotted residential flat No. 901 on 9th floor at Allure Tower in Omaxe City, Sonapat in the name of complainant.
 6. That the respondent issued the letters of intimation of due installment to the complainant dated 18.06.2007 to remit the amount of ₹8,06,090/- on or before 03/07/2007. Another letter dated 30.07.2007 was issued vide which demanded an amount of ₹9,25,400/- on or before to be paid 15/08/2007. Copies of said letters are annexed as annexure- P/4 &P/5.
 7. That the complainant visited the project site somewhere around July, 2007 and shocked to see that the project was still in inception stage and not even one floor had begun for the tower in question despite lapse of almost one year. Complainant got the information on visit to the registered office of the respondent that respondent had cancelled the allotment of complainant's flat. Complainant requested several times for reissue of allotment of his flat but respondent failed to give any response. Then respondent asked the complainant to write an application of refund of his deposited amount i.e. ₹5,00,500/- which was retained by the respondent.



Complainant submitted an application for refund on 24.07.2018 to the respondent addressed by hand on 12.09.2019. Again on 23.01.2023, complainant sent another application for refund of amount and sent through registered post. Copies of said applications are annexed as Annexure-P/6 &P/7 and tracking report of these applications are annexed as Annexure -P/9 &P/10. No response was sent by the respondent on his applications. Thereafter, the complainant sent a legal demand notice dated 03.02.2023 as both the addresses of the respondent a copy of which is annexed as Annexure P/11, and tracking reports of both the receipts are annexed as Annexures P/13 & P14 but no reply has been received by the complainant from the respondent, therefore, aggrieved with the action of the respondents, he filed the present complaint before this Hon'ble Authority for seeking refund of amount paid, i.e., ₹5,00,500/- to the respondent along with interest.

C. RELIEFS SOUGHT:-

8. That the complainant seeks following reliefs and directions to the respondent:-
 - i. Direct the Respondent to award Refund of amount of ₹5,00,500/- paid by the complainant along with interest @10.30% from the date of receipts of each payment till the actual date of refund.



- ii. Direct the respondent to pay the compensation as this Hon'ble Authority may deem fit.
- iii. It is being further prayed that penalty for violating the provision of RERA Act and the regulation made by the Haryana, may kindly be imposed and same may be awarded to the complainant.
- iv. In exercise of powers envisaged under chapter v, of the RERA Act 2016 and Chapter V, VII & VIII of the Rules 2017, it is further prayed that the complainant may kindly be awarded with the penalty amount of Rs. 5 Lakhs for causing unnecessary harassment and for the unfair trade practice and also for using the booking amount of the complainant for his own benefit.
- v. The complainant may be allowed with the costs and litigation expenses of ₹50,000/-.
- vi. Pass such order or further orders as this Hon'ble Authority may deem fit and proper under the circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 30.01.2024 pleading therein as under :-



9. That the present complaint is not maintainable under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "2016 Act") as none of the provisions of the 2016 Act has been contravened / violated by the Respondent. Neither the allegations leveled by the complainant fall within the four corners of any other provisions of 2016 Act.
10. 4. That the present complaint is hopelessly barred by limitation. Though there is no limitation period prescribed under the Real Estate (Regulation & Development) Act, 2016, (hereinafter referred to as the '2016 Act') for filing the complaint, however, Section 88 of the 2016 Act clearly states that the provision of 2016 Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Admittedly, in the present case, the unit in question stood cancelled in the year 2007 as per complainant's own averments in the complaint and the present complaint has been filed on 18th February, 2023, i.e., after a lapse of more than 16 years. That even under the civil law, limitation period to file suit for recovery is 3 years from the date of cause of action and any suit filed thereafter is barred by limitation and, as such, is liable to be dismissed. Since, in the present case, the cause of action arose in 2007 itself i.e. when the Respondent cancelled the allotment but the complaint having been filed on 18t February 2023, i.e., after a lapse of more than 16



years, Therefore, the present complaint is time barred and, as such, deserves to be dismissed on this short ground itself. That there is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA Act, 2016 is not maintainable before this Hon'ble Authority.

11. That vide the present complaint, complainant is primarily seeking refund of Rs.5,00,500/-, along with interest @ 10.30% from the date of deposit till realization. It is the case of the Complainant that in pursuance to him paying an amount of Rs.3,00,000/- in September 2005 and Rs.2,00,500/- in April 2006, he was allotted Flat No.901/Ninth Floor at Allure Tower, Omaxe City, Sonapat. Further, it is admitted in the complaint that Respondent issued letter dated 18th July 2007 (Annexure P/4) & letter dated 30th July 2007 (Annexure P/5) for payment of due installments and, thereafter, the complainant got information that allotment of complainant's flat was cancelled. It was further alleged that on asking of the Respondent, the Complainant submitted an application for refund of ₹5,00,500/- on 24 July 2018, i.e., almost after 11 years of making the last payment. However, since the Respondent did not refund the said amount, the Complainant again submitted an application dated 23 January 2023 for refund of said amount and, thereafter, issued legal notice dated 3 February 2023 seeking refund of ₹5,00,500/-. In the humble submission



of the Respondent, admittedly in the present case last payment of ₹2,00,500/- was made on 24th April 2006. Thereafter, letters dated 18th July 2007 & 30th July 2007 (Annexures P/4 & P / 5) were sent to the complainant for paying the due installment. However, as per his own admission in para no.12 of the complaint, he could not make further payments owing to the financial emergency in his family. Further, in para no.11 he states that he was made aware about the cancellation of his allotment when he visited registered office of the Respondent, therefore, now after 16 years, the present complaint is not maintainable.

12. That respondent has allotted the flat in question to Sh. Rajeev Batra vide agreement dated 18.07.2012 and thereafter Conveyance Deed has been executed by the respondent which is annexed as annexure R/1&R/2.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

13. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that complainant is interested in seeking refund of the amount deposited by him along with interest. Learned counsel for respondent admitted the fact that complainant had paid an amount of ₹5,00,500/- . Further he stated that he did not refund the said amount to the complainant till date. Authority asked the counsel



for respondent whether OC is received or not? In response to this, he replied that respondent company has not received OC as yet.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

15. 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) The respondent has taken a stand that present complaint is not maintainable under Section 31 of the RERA Act. Respondent admitted the fact that there is no BBA executed between both the parties. However, despite that respondent has still retained the complainant money over a period of more than 18 years. Further, no proof of cancellation of the flat of the complainant is placed on record by the respondent. The respondent has received money and issued receipts against specific flat no. 901 from the complainant. Thus the complaint is very much maintainable before RERA under Section 31 of the RERA Act. Hence plea of respondent does not hold any merit and is therefore rejected.



(ii) Respondent has also taken objection that complaint is grossly barred by limitation. In this regard Authority places reliance upon the judgment of Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as "**M.P Steel Corporation v/s Commissioner of Central Excise**", where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act 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. The promoter has till date failed to fulfill its obligations because of which the cause of action is re-occurring.

(iii) Factual matrix of the case is that admittedly, the complainant booked the residential plot by paying ₹3,00,000 intially on 13.09.2005 then ₹2,00,500/- on 26.04.2006 which were admitted by the respondent in his reply also. That no builder buyer agreement was executed between the parties. If there is no signed "Builder-Buyer Agreement" between a builder and a complainant, the builder cannot legally retain the money paid by the complainant, as there is no binding contract outlining the terms of the sale, and the buyer is entitled to a refund of the amount paid. It means respondent does not have any right to retain the paid



amount of ₹5,00,500/- of the complainant and complainant is entitled to get its refund of ₹5,00,500/-. As per complaint, complainant got the information by visiting their registered office that respondent had cancelled the allotment of complainant's flat but no cancellation letter has placed on record by the respondent and complainant also. It is an admitted fact that even after a lapse of more than 18 years, no allotment of flat has been made in favour of complainant by the respondent. Thus, the respondent who has accepted total paid amount of ₹5,00,500/- way back in the year 2005 has been in custody of the money paid for allotment of the flat and has been enjoying the benefits out of it and is liable to refund the same with interest to the complainant particularly in view of the fact that project is still not complete as respondent could not place on record a copy of Occupation Certificate of the project.

(iv) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"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 (MCLR) 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”.

(v) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

(vi) Consequently, as per website of the State Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 16.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(vii) The definition of term ‘interest’ is defined under Section 2(z a) 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;



Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, the Authority directs the respondent to refund the paid amount of ₹5,00,500/- along with interest 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 11.10%(9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and said amount works out to ₹5,00,500/- as per detail given in the table below.

Complaint no. 464/2023:-

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 16.12.2024
1.	3,00,000/-	13.09.2005.	6,41,823/-
2.	2,00,500/-	26.04.2006	4,15,233/-
TOTAL=	5,00,500/-		
Total amount to be refunded to the complainant = ₹5,00,500/- + ₹10,57,056=15,57,556/-			

(viii) In respect of clause (iii) &(iv) of relief para 8, it is to mention here that the complainant has neither argue nor pressed upon these relief clauses at the time of hearing. So, no directions were passed against the said relief clauses.

(ix) Further, the complainant is seeking compensation and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

H. DIRECTIONS OF THE AUTHORITY

16. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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 refund the entire paid amount ₹5,00,500/- with interest ₹15,57,556/—to the complainant. It is further clarified that respondent will remain liable to pay the



interest to the complainant till the actual realization of the above said amounts.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]