



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1288 of 2023
Date of filing:	16.06.2023
First date of hearing:	27.07.2023
Date of decision:	13.05.2025

Yashbir Singh

House no 621, ward no-24

Dev Nagar, Bahadurgarh ,

Jhajjar, Haryana 124507

.....COMPLAINANT

Versus

Omaxe Ltd.

Shop no.19-B, First floor,

Omaxe celebration Mall, Sohna Road,

Gurgaon-122001

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of Hearing: 13.05.2025

Present: - Adv. Abhimanu, I.d. Counsel for complainant
Mr. Yashbir Singh , complainant in person
Adv. Arjun Sharma, I.d. Counsel for respondent through VC

Geeta Rathee

ORDER

1. Present Complaint 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:

Sr. No	Particulars	Details
1.	Name of the project	Omaxe Shubhangan, Sector 4A, Bahadurgarh
2.	Name of the promoter	Omaxe Ltd.
3.	RERA registered or not	Not registered
4.	Unit No.	303
5.	Original area	500 sq. ft.
6.	Increased area	635 sq. ft.



7.	Date of allotment	13.08.2015
8.	Date of builder buyer agreement	20.05.2016
9.	Deemed date of possession	20.05.2018(as per clause 40(a)) <u>Clause 40 (a)</u> <i>"the company shall complete the development/construction of the Unit/Project within 18 (Eighteen) months from the date of signing of this Agreement by the Buyer(s) or within an extended period of 6 (Six) months."</i>
10.	Basic sale price of unit	Rs. 14,38,66/-
11.	Amount paid by the complainant	Rs. 14,33,257/-
12.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Facts of the complaint are that original allottee i.e. Sushma Goel booked the unit admeasuring area 500 sq.ft. by paying Rs. 1,61,016/- on 05.09.2012 in respondent project namely "Omaxe Shubhangan, Bahadurgarh."
4. That Vide request form dated 19.11.2012 right of unit s transferred in the name of complainant i.e. Yashbir Singh.
5. That complainant made payment to the tune of Rs.4,79,616/- (Rs. 1,61,016/- through cheque No. 6145 towards booking amount of flat and Rs. 3,18,600 in cash that includes an amount of Rs 2,00,000/- cash as extra



premium and Rs. 1,18,600/- as cash towards cash discount on BSP) to the original allottee, as the purchase price for flat in question from the original allottee. The said amount of Rs. 1,18,600/- was paid to the original allottee on an assurance basic sale consideration of the unit in question as cash discount on Basic sale price.

6. That in an arbitrary and discriminatory manner, without proper declaration or intimation to the complainant, respondent increased the basic sale price (BSP) of the unit from Rs. 11,41,400/- to Rs. 14,66, 588/-. Pursuant to the enquiry of the complainant regarding change in basic sale price, the respondent revealed in an email dated 02.01.2014 that the changes in basic sale price of the unit were due to change in area of the unit, meaning thereby, the super area of the unit/flat in question had been increased from 500 sq. ft. to 635 sq. ft.
7. That the complainant requested the respondent on numerous occasions to give clarification regarding the arbitrary demands raised by the respondent and to give reasons for levying and demanding Rs. 40,000/- as club membership cost however the membership of club was optional, and the complainant had already refused to avail the membership of club. As such the complainant requested the respondent to waive off said charges. The complainant also visited the customer relation department on 18.01.2014, as suggested by the respondent vide e-mail dated 13.01.2014 and during the meeting, the respondent assured to deduct an amount of Rs. 1,18,600/- and



club membership of Rs 40,000/- from the BSP. However, respondent neither got ready to adjust any discount, as assured at the time of endorsement nor deducted club membership charges from total amount that was payable by the complainant. Thereafter, complainant marked another mail to the respondent for adjustment of discount of Rs. 1,18,600/- in revert to which the respondent again assured of discussions with the senior management. It is important to mention here that the complainant raised the requests on numerous occasions to the respondent to adjust cash discount of Rs. 1,18,600/- and club charges of Rs. 40,000/- that were optional but added later in total amount payable by the complainant. However, the respondent never denied to adjust said amounts but gave false assurances to make such adjustments at the earliest. Moreover, the respondent kept on raising demands for further payment and even threatened to charge heavy interest on unpaid amounts.

8. That respondent allotted unit no. 303 on 3rd floor of Tower 3, admeasuring 635 sq. ft. to the complainant vide allotment letter dated 13.08.2015. Furthermore, it is submitted that complainant had already paid Rs.3,25,768/- i.e. more than 20% of the basic sale price by the time the allotment letter was issued. Thereafter, builder buyer agreement was executed between complainant and respondent on 20.05.2016. It is pertinent to mention here that as per clause 40(a) of the said agreement, the respondent was liable to complete the construction of the project and to



give handover of the flat in question to the complainant within 18 months from the date of signing of the said agreement i.e. by 20.11.2017. However, the respondent had neither completed the project nor offered possession of the unit in question to the complainant till date.

9. That respondent firstly raised the BSP of the unit in question from Rs. 11,41,400/- to Rs. 14,66,588/- without mentioning any due reason and later on increased EDC charges to 7.5 times i.e. From Rs. 20,000/- to Rs. 1.46 Lacs that the complainant came to know from perusal of the demand letter of Jan 2021. That complainant asked about the reason for such an increase in EDC and asked for a breakup of charges levied. However, respondent not only failed to give any satisfactory reply but also remained adamant to meet such arbitrary demand.
10. That the complaint raised his contentions regarding non-completion of construction of their flat, from 2017 till Apr 2023 and various e-mails have also been marked to the respondent in this regard, but no satisfactory reply had ever been given by the respondent despite fake assurances of the completion at the earliest. The complainant even escalated his complaint up to the chairman level of the company i.e. to Mr. Rohtash Goel and marked three mails on his official id i.e. rohtas@omax.in first on dated 08.04.2023, second on 25.04.2023 and third mail on 11.05.2023, requesting his intervention and resolution, but no response has ever been received.



11. That complainant made timely payments against the unit in question as per each and every demand raised by the respondent. Despite the complainant having paid a substantial amount of Rs.14,33,257/- (including taxes) against Basic sale price of Rs. 11,41,400/- that was raised arbitrarily to Rs. 14,66,586/- and corrected as Rs. 14,38,166/- vide statement of account dated 27.01.2021, discharged his part of obligations as per the contract, however the respondent failed to perform his part of duties.

C. RELIEF SOUGHT

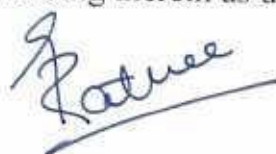
12. Complainant in its complaint sought following reliefs :
- i. To give necessary directions to the respondent to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interest as per the provisions of Sec. 18 and Sec. 19(4) of the RE(R&D)Act.
 - ii. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by them.
 - iii. To direct the respondent to provide a detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments.
 - iv. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sec. 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 direct the respondent to refund an amount of Rs 1,18,600/-with applicable interest which were paid by complainant to the original allottee in cash for getting discount in basic sale price of flat.
- vii. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, 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 recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.
- ix. To issue direction to pay the cost of litigation.
- x. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY ON BEHALF OF RESPONDENT

Notice was served to the respondent on 28.06.2023, which got successfully delivered on 30.06.2023. The respondent through counsel Adv. Arjun Sharma filed reply on 30.01.2024, pleading therein as under:



13. Respondent states that the alleged dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 [as amended vide the Arbitration & Conciliation (Amendment) Act, 2015] in terms of clause 62 of the Agreement. The filing of present reply is without prejudice to the said fact, and it should not be construed that the respondent have agreed to submit to jurisdiction of this Hon'ble Authority or that it has waived its plea for referral of alleged dispute to arbitration. The respondent prays that matter be referred to arbitration as not only does the amended Section 8 of the Arbitration & Conciliation Act, 1996 make it mandatory to refer disputes to arbitration notwithstanding any judgment of any court but also due to fact that present case raises complex questions of fact and would involve detailed evidence. Hence, this Hon'ble Authority does not have jurisdiction to entertain the present complaint.
14. That Authority does not have the territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh & Delhi.
15. That after the allotment rights was endorsed in favour of the complainant, the respondent provided complainant with his payment plan dated 06.03.2014, which reflected that the area of unit in question was increased from 500 sq.ft. to 600 sq.ft., discount of Rs.63,000/-was



given on basic sale price and Rs.40,000/- was being charged towards club cost. Accordingly, vide letters dated 21.03.2014 the complainant requested to deduct an amount of Rs.1,18,600/-, towards discount, from basic sale price and to remove/deduct the club cost of Rs.40,000/-, as the club cost was optional when he purchased the unit and as he did not intend to avail said club facilities. Acceding to the afore-mentioned requests of the complainant, the respondent issued fresh payment plan dated 21.04.2014 to the complainant, perusal of which would show that the respondent gave a discount of Rs.1,18,600/- to the complainant on the basic sale price and also removed/deducted the cost of Rs.40,000/- that was being levied on the complainant towards club cost.

16. That vide Agreement dated 20.05.2016, the complainant was allotted Apartment No. "NHBH/TOWER/3/THIRD/303" having super area admeasuring approx. 635 sq. ft. in the residential project "SHUBHANGAN" situated in sector 4-A, Kassar Road, Bahadurgarh for a total amount of Rs.14,69,588/-. However, the said amount of Rs. 14,69,588/- did not include amount to be paid towards stamp duty, registration charges, cost towards individual electricity meter, external electrification, water & sewerage, EDC, IDC, etc. As per clause 40 (a) of the said agreement, possession had to be offered within 24 months, however, the same was subject to force majeure conditions and subject to



timely payment by the allottee or subject to any other reasons beyond the control of the respondent company.

17. That it had been agreed and accepted between the parties that in case of any default/delay in payment as per the schedule of payments as provided in the allotment letter, the date of handing over of the possession shall be extended accordingly. It is a matter of record that the complainant has not fulfilled his obligation and has not paid the installments on time that had fallen due. Accordingly, no relief for alleged delayed offer for possession can be said to be maintainable.

18. That in the event of failure of the respondent-company to handover possession by due time, clause 40 (g) of the allotment letter will be enforced and in view thereof, the respondent-company is liable to make compensation of Rs.5 per square per feet, per month, for the entire delayed period. It is submitted that both the parties are bound by the clauses of the agreement and the respondent-company is ready to make payment of the compensation amount to the complainant, in view of the clauses of the agreement qua delay in handing over possession; and thus, no cause of action has arisen in favour of the Complainant to file the present complaint and thus, the same deserves to be dismissed.

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



19. During oral arguments Ld. counsels for complainant and respondent reiterated the arguments as stated in their written submissions. On hearing dated 03.12.2024, complainant stated that he is only claiming delayed possession charges and wish to drop off other reliefs. His request is accepted by Authority.

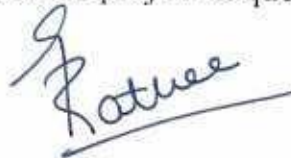
F. ISSUE FOR ADJUDICATION

Whether the complainant is entitled for physical possession of plot along with an interest @18% p.a. on account of delay of physical possession of the plot in question.

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT

Objection regarding territorial jurisdiction

One of the averments of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. In this regard it is submitted that 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 entire Haryana except Gurugram District for all purpose. In the present case the project in question is situated



within the planning area Bahadurgarh, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

Objections raised by the respondent stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015)

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.



H. OBSERVATIONS AND DECISION OF THE AUTHORITY

The Authority has gone through the facts of complaint as submitted by the complainant. In the light of the background of the matter as captured in this order and also arguments by complainant, Authority observes that:

20. That original allottees i.e. Ms. Sushma Goel booked a unit in respondent project namely Omaxe Shubhangan, situated at Bahadurgarh, Jhajjar. Vide request letter dated 19.11.2012, complainant i.e. Yashbir Singh purchased unit from original allottees. Builder buyer agreement executed between complainant and respondent 20.05.2016. Complainant had paid a total amount of Rs. 14,33,257/- against the basic sale consideration of Rs. 14,38,166/-.
21. It is matter of record that an agreement to sell was executed between the parties on 20.05.2016. As per clause 40(a) of agreement to sell respondent promised to handover the possession within 18 months from date of signing of agreement or within an extended period of 6 months. However, it is not denied that till date no offer of possession has been made to complainant meaning thereby that respondent has failed to fulfil its obligation as provided in the agreement for sale and it is clear violation of section 11(4)(a) of the RERA Act, 2016. Complainant vide numerous emails requested respondent to handover possession of unit. Vide email dated 08.11.2021, 02.09.2022, respondent stated that possession will be rolled out in 2- 4 months and vide email dated



03.11.2022 respondent stated that possession will be rolled out till June 2023. However, till date possession has not been offered to complainant. In such circumstances, as per section 18(1) of RERA Act, allottee may either choose to withdraw from the project and demand refund of the amount paid or may continue with the project and seek interest on account of delay in handing over possession. In the present case complainant wish to continue with the project, therefore is entitled to interest on account of delay in handing over possession. Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 20.05.2018 till the date on which a legally valid offer of possession is made to complainant after obtaining part completion certificate. 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: Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

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"

22. 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., 13.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

23. Authority has calculated the interest on the total paid amount from the deemed date of possession i.e. 20.05.2018 till the date of this order i.e. , 13.05.2025 at the rate of 11.% till, and said amount works out to Rs. 10,79,430/- as per detail given in the table below:

Sr.no	Principal amount	Deemed date of possession or date of payment whichever is later	Interest accrued till 13.05.2025
1.	81803	07.03.2019	56222
2.	152652	20.05.2018	118425



3.	81803	19.09.2018	60426
4.	232630	20.05.2018	180471
5.	152652	20.05.2018	118425
6.	135834	20.05.2018	105378
7.	152651	20.05.2018	118424
8.	161016	20.05.2018	124914
9.	38984	20.05.2018	30243
10.	166040	20.05.2018	128811
11.	3421	08.02.2019	2379
12.	73771	21.01.2021	35312
	Total Principle amount = Rs.14,33,257/-		Total = Rs.10,79,430/-
	Monthly interest		Rs. 9,848/-

I. DIRECTIONS OF THE AUTHORITY

24. Hence, the Authority hereby passes this order and issues 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:

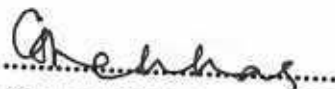
- (i) Respondent shall offer possession of the plot to complainant within 30 days from the date of obtaining occupation certificate.
- (ii) Respondent is directed to pay upfront delay interest of Rs. 10,79,430/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of Rs.14,33,257/- monthly



interest of Rs.9,848 /- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of possession offered.

25. Captioned complaint is accordingly **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


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