



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	47 of 2024
Date of filing:	22.01.2024
Date of first hearing:	05.03.2024
Date of Decision:	20.05.2025

**Anita Rani W/o Kulbhushan**  
**Kulbhushan S/o Ramdhan**  
Both R/o 74, Prashant Apartment,  
IP Extension, Patparganj  
New Delhi 110092

....COMPLAINANT 1  
....COMPLAINANT 2

VERSUS

**M/S. Omaxe Ltd.**  
R/o Shop No.19-B, First Floor,  
Omaxe Celebratio Mall, Sohna Road,  
Gurgaon-122001, Haryana

....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Date of decision: 20.05.2025**

*Geeta Rathee*

**Present:** Adv. Arjun Kundra, Ld. counsel for complainant  
 Adv. Arjun Sharma, Ld. counsel for respondent through VC

**ORDER**

1. Present complaint was filed 22.01.2024 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 fulfill all the obligations, responsibilities and functions towards the allottees 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	Omaxe Shubhangan, situated at Sector 4A, Village Kesar, Jhajjar
2.	RERA registered/not Registered	Un-Registered
3.	Nature of project	Residential Group Housing project
4.	Unit no.	702
5.	Unit area	2215 sq. ft.
6.	Date of allotment	19.12.2013

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7.	Builder Buyer Agreement	12.04.2014
8.	Deemed date of possession	12.04.2016 as per clause 40(a) <u>Clause 40 (a)</u> "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"
9.	Total Sale Consideration	₹ 56,09,800/-
10.	Amount paid by complainant	₹ 55,94,061/-
11.	Option of offer of possession	21.11.2023

#### B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT

3. Facts of complaint are that respondent had launched a group housing project namely Omaxe Shubhangan, situated at Sector 4A, village Kasar, Tehsil Bahadurgarh, Jhajjar, Haryana.
4. That earlier, the booking was made by the original allottee namely Sh. Harsh Ahlawat, however the same was transferred in the name of complainant no. 1 vide request form dated 27.04.2013.
5. That allotment letter was issued on 19.12.2013 wherein unit no.702, admeasuring area 2215 sq.ft. was allotted to complainant. Agreement to sell was executed between complainant no.1 i.e. Anita Rani and respondent on 12.04.2014. Later vide request form dated 07.08.2014 complainant no. 2 i.e. Kulbhushan become co allottee in unit. Complainants had paid Rs. 55,94,061/- towards total sale price of





Rs.56,09,800/- .

6. That several amenities were promised to the complainants at the time of booking i.e. green area, club facility, swimming pool, badminton court, gymnasium, rooms for recreational activities however none of these amenities are functional or available in the project.
7. That complainants were under constant threats from the respondent that in case the complainants failed to make any payment of installment, their unit shall be cancelled and payment forfeited. Complainants continued to make payments to the respondent as and when demanded as there was a lingering threat that the respondent may forfeit the paid amount in case the complainants fail to or defy any demand and apartment buyer agreement is unilateral, arbitrary.
8. That the complainants were not permitted to make any changes to the apartment buyer's agreement. Complainants on their part had requested the respondent to modify or alter the agreement, several times, but no such request was allowed by the respondent. In fact, the cover letter issued by the respondent to the complainants clearly states that the complainants are not permitted to make any kind of alterations or changes to the apartment buyer's agreement.
9. That the terms of the apartment buyer agreement were also in clear contradiction to the provisions of the Real Estate (Regulation and Development) Act, 2016 which has clarified the position that the



interest payable by the promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them.

10. That while in case of delay in the payment of the installment, the complainants are liable to make the payment of 18% interest p.a., the respondent has restricted its liability to only a meager Rs 5/-(Five) per sq.ft. of the super area.
11. That the possession of the unit has been due since april 2016, but till date, no legal offer of possession has been issued by the respondent to the complainants. Complainants are aggrieved by such conduct on the part of the respondent which has failed to complete the construction and development of the project for several years now.
12. That even today project is not complete. Complainants have requested the respondent several times for the delivery of possession of the apartment/unit or refund of their money with prescribed rate of interest but all their requests have fallen on deaf ears. Complainants are entitled to the refund of their money along with interest as already inordinate delay has occurred in the present case and they can wait no longer.
13. That complainants have never defaulted in any installment as there was a lingering threat of delay penalty of 24% and complainants have made all the payments before time and majority of the consideration was collected by the respondent by 2017.



14. That respondent issued a "option for offer of possession letter" dated 21.11.2023. The letter no-where states whether the respondent has received the occupation certificate/completion certificate till date, rather, it states that the "development is on the verge of completion and the respondent is in the "process of obtaining all necessary approvals".
15. The complainants on the receipt of the "option for offer of possession" letter enquired from the authorities to know the status of the project, and were deeply disturbed to know that the project is yet to receive any occupancy approval. The complainants, under this state of shock, wrote to the respondent their response dated 20.12.2023

**C. Relief Sought**

16. Complainants in its complaint has sought following reliefs:
- Direct the respondent to refund the sum of Rs 55,94,061/- (Rupees Fifty-Five Lakhs Ninety-Four Thousand and Sixty-One Only) to the complainants, alongwith prescribed rate of interest as per the RERA Act, 2016 from the date of respective payment of installments until the actual realization; and
  - May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

17. Learned counsel for the respondent filed detailed reply on 29.10.2024 pleading therein as under :





- a) That the instant complaint in its present form is not maintainable under Section 31 of The Real Estate (Regulation and Development) Act, 2016 as none of the provisions of the 2016 act has been contravened/violated by the answering respondent. Neither the allegations leveled in the complaint fall within the four corners of any other provisions of the 2016 Act.
- b) 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 has 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 makes 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.
- c) That complainants have give an impression as if they are the original allottees and unit in question was booked by them in December 2012.

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whereas fact of the matter is that vide request form dated 27.04.2013, allotment rights of the original allottee, Sh. Harish Ahlawat, were transferred in the name of Complainant No.1 and prior to that complainant No.1 had no concern with the unit in question whatsoever. Thereafter, vide letter dated 19.12.2013, unit in question was provisionally allotted to Complainant No.1. Further, on 12.04.2014 allotment letter governing the terms of allotment was executed between the respondent and complainant No.1. Still further, complainant No.2 was added as a co-allottee in the month of July 2014, and prior to that he had no concern with the unit in question whatsoever. It is also pertinent to mention here that not even once prior to filing the present complaint, did the complainants asked for refund of their amount on any ground whatsoever and the said fact can be ascertained from the complainants letter/reply dated 20.12.2023 whereby the complainants had specifically asked the respondent to issue revised offer of possession after obtaining occupation certificate

d) That clause 40 (a) of the agreement dated 12.04.2014 would reveal that it had been categorically agreed between the parties that possession is subject to force majeure conditions and subject to timely payment by the allottees or subject to any other reasons beyond the control of respondent, the respondent proposed to complete the development /construction of the unit in question within 18 months from the date of





signing of the agreement or approval of the building plans, whichever is later, and within such further extended grace period of 6 months, meaning thereby in total 24 months. However, the afore-said period of development was to be computed by excluding Sundays, Bank Holidays, enforced Govt. Holidays and days of cessation of work at site in compliance of order of any judicial / concerned state legislative body.

e) That without prejudice to the above submissions, even otherwise, the Hon'ble 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 and Delhi. In this regard, it is submitted that the parties vide Clause 63 of Agreement executed have agreed as follows

*"Subject to the Arbitration as referred above, the Courts at Bahadurgarh and Delhi shall have jurisdiction in all the matters arising out of/or touching upon and/or in connection with this Agreement."*

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

18. During oral arguments learned counsel for the complainant and respondent have reiterated arguments as mentioned in their written submissions..



**F. ISSUES FOR ADJUDICATION**

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

**G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

**G.1. 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.

**G.2. 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 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 under:

20. It is a matter of record that original allottee i.e. Harsh Ahlawat had booked unit in 2012. Thereafter complainant no. 1 i.e. Anita Rani purchased rights of unit vide request form dated 27.04.2013. Builder buyer agreement was executed between complainant no.1 and





respondent on 12.04.2014. Vide request form dated 07.08.2014 complainant no. 2 i.e. Kulbhushan become co-allottee in unit. Complainants were allotted Unit no. 702, Tower 16, in the real estate project "Omaxe Shubhangan" situated at Sector 4A, Kasar Road, Bahadurgarh, District Jhajjar vide allotment letter dated 19.12.2013. Complainant had paid Rs. 55,94,061/- against total sale price of Rs. 56,09,800/- .

21. As per clause 40(a) of agreement to sell dated 12.04.2014, respondent agreed to complete the development/ construction of the unit/project within 18 months from the date of signing of the agreement for sale or within an extended period of six months. The clause further provides that completion of development of unit within such 24 months is subject to force majeure. Authority observes that there is no document on record to prove occurrence of any force majeure condition between date of agreement i.e. 12.04.2014 and deemed date of handing over possession i.e. 12.04.2016. Authority further observes that the respondent has taken a defence that the construction work was affected/delayed due to covid outbreak. However, this defence is not maintainable for the simple reason that the covid pandemic occurred in the year 2020 i.e. almost 4 years after the lapse of 24 months. Therefore, in terms of the agreement for sale the respondent was obligated to handover the possession of the unit by 12.04.2016. However, respondent did not offer



a legally valid possession by 12.04.2016. However, In fact on 21.11.2023, the respondent issued a letter dated 21.11.2023 to complainants having subject "Option for offer of possession" wherein respondent has given complainant an option to take temporary fit out possession of the unit to complete the interior and furnishing work of the unit so that the unit is ready by the time offer of possession made by the complainant after receiving occupation certificate. Meaning thereby the said "option for offer of possession" was without an occupation certificate from DTCP. In fact in its "option for offer of possession" letter dated 21.11.2023 at para 2, the respondent itself has admitted that it shall be offering possession of the said unit after obtaining necessary approvals from the competent Authority. Hence, the "option of offer of possession" letter does not absolve the respondent from its obligation to make a legally valid offer of possession.

22. The issue of offering fit out possession has earlier been dealt by this Authority in **Complaint case No. 903 of 2019 titled Sandeep Goyal Vs. Omaxe Ltd.,** wherein it was held that fit out possession without obtaining Occupation Certificate is not a valid offer of possession and the same is reiterated by this Hon'ble Authority in **Complaint Case No. 252 of 2021 titled Harjit Kaur & An Vs TDI Infra Corp (India) Limited** decided on 18.05.2023. the relevant part of the order is reproduced below:



"7. At this stage, the Authority would express its views regarding the concept of valid offer of possession. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components: i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.....

(ii) Secondly, the apartment should be in habitable condition.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession...."

For the above observation, it follows that offer of fit-out possession dated 21.11.2023 in present case is illegal and cannot be called a lawful offer of possession. Complainants had invested their hard earned money in the project with the of timely delivery of possession. Authority further observe that the complainant in their complaint has stated that they had turned down the "option for offer of possession" letter dated 21.11.2023 vide letter dated 20.12.2023. On perusal of this letter dated 20.12.2023, it is revealed that the same is unsigned, however, respondent has denied





receiving any such letter. Nevertheless, complainants at page 79 of its complaint have also annexed copy of email dated 01.01.2024 sent to respondent in response to the letter respondent dated 21.11.2023, and as the letter annexed to it. Authority observes that content of the letter attached to the email cannot be ascertained. Irrespective of this fact, it is clear and established that the letter of "option of offer of possession" dated 21.11.2023 was not a valid offer of possession.

23. Furthermore, respondent has admitted that till date it has not received an occupation certificate from DTCP. Since respondent has not offered a valid offer of possession until now after a delay of almost ten years, complainants who has already waited for more than ten years does not wish to wait for a further uncertain amount of time or a valid possession. Complainants is at liberty to exercise his right to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount. Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund

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*referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

24. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund along with interest at the prescribed rate in favour of complainant. 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*

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*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;*

25. Rule 15 of IIRERA 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".*

26. 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. 20.05.2025 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.

27. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs.55,94,061/- 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 11.1% (9.1% + 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 11.1% till the date of this order and total amount works out to Rs.1,14,09,473/-as per detail given in the table below:

Sr. No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 20.05.2024 in (Rs.)
1.	151849	16.02.2019	105565
2.	400000	24.06.2017	351307
3.	5394	02.04.2013	7270
4.	476008	14.03.2017	432828
5.	748900	12.12.2015	785274
6.	231631.08	02.04.2013	312196
7.	100000	14.03.2017	90929
8.	450000	24.12.2012	620064
9.	368.92	02.04.2013	497
10.	744382	15.06.2013	986537
11.	27500	29.08.2013	35819
12.	749974	11.08.2016	730978
13.	576007	11.12.2016	540047
14.	409754	13.06.2017	361245
15.	500000	24.06.2017	439134
16.	22293	14.01.2019	15722
	Total Principle amount = Rs. 55,94,061		Interest=Rs. 58,15,412
Total amount to be refunded by respondent to complainant = Rs. 1,14,09,473 /-			




**I. DIRECTIONS OF THE AUTHORITY**

28. 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 is directed to refund the entire amount of Rs.1,14,09,473/- to the complainants. It is further clarified that respondent will remain liable to pay the interest at the prescribed rate to the complainant till the actual realization of the amount.
- (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.

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

  
.....  
**CHANDER SHEKHAR**  
**[MEMBER]**

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