



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1063 of 2024
Date of filing:	13.08.2024
Date of first hearing:	19.11.2024
Date of Decision:	29.07.2025

Suraj Mukhi

H.NO. 360A, Ward no.-14, Vasant Vihar

Bahadurgarh, 124507

....COMPLAINANT

VERSUS

M/s Omaxe Pvt. Ltd.

Shop no. 19-B, 1st floor, Omaxe Celebration Mall

Sohna Road, Gurgaon-122001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of decision: 29.07.2025

Present: Adv. Sahil Dagar, Ld. counsel for complainant through VC
None for respondent

ORDER

1. Present complaint was filed on 13.08.2024 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 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, amount paid by 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, Sector 4A, Bahadurgarh
2.	RERA registered/not Registered	Registered (202 of 2017)
3.	Unit no.	RHBH/TOWER-18/THIRD/302
4.	Unit area	1280 sq. ft.
5.	Date of provisional allotment letter	01.11.2013
6.	Date of agreement to sell	28.03.2014



7.	Deemed date of possession	27.03.2016 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>
8.	Basic sale Price	Rs.28,01,029/-
9.	Amount paid by complainant	Rs. 34,48,878/- (as per receipts attach)
10.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED IN COMPLAINT

3. That complainant had booked a flat in respondent project on 24.08.2012 by paying of Rs.3,00,000/-. Vide provisional allotment letter dated 01.11.2013 followed by allotment letter dated 31.03.2014 complainant was allotted flat no. RHBH/T-18/302, 3rd floor having a super area of 1280 Sq. Ft. in respondent project namely Omaxe Shubhangan (3-4 BHK), Sector-4A, Kassar Road, Bahadurgarh. On 28.03.2014, the agreement to sell was executed between complainant and respondent. Complainant had paid Rs.34,41,878/-(as per receipts 34,48,878/-) against basic sale price of Rs. 28,01,029 /-
4. That as per the clause 40 (a) of the agreement to sell respondent was to handover the possession of the said flat within 24 months from the signing of the agreement to sell, i.e. by the end of March 2016.



However, even after a lapse of more than 8 years respondent has not even completed the basic construction of the said project.

5. That respondent is not complying with terms and conditions of the agreement to sell dated 28.03.2014. The complainant has made a payment of more than Rs. 34,41,878/- however till now there is no sign of construction or possession in near future.
6. That at the time of taking advance money for the said unit the respondent had given a rosy picture and had made false promises to the complainant and has cheated the complainant. The respondent have miserably failed to comply with its contractual obligations qua said project. Also, miserably failed to adhere with the Real Estate (Regulation and Development) Act, 2016 and rules & regulations made thereunder.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

- a. Direct the respondent to refund the total deposited amount Rs.34,41,878/- (Rupees Thirty Four Lakh Forty One Thousand Eight Hundred Seventy Eight) along with interest @ 18% p.a from the date of deposit till the date of refund to the complainant.
- b. Direct the respondent to pay Rs. 2,00,000/- (Rupees Two Lakh only) to the complainant for the deficiency of services, unfair trade practices, mental harassment and agony caused due to the acts/omissions of the



respondent.

- c. Direct the respondent to pay a sum of Rs. 75,000/- (Rupees Seventy Five thousand only) to the complainant towards the cost of litigation;
- d. Any other damages, interest, relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainant and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 30.01.2025 pleading therein:

- 7. The respondent stated 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 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.
- 8. That Hon'ble Authority has no territorial jurisdiction to entertain and try the present complaint. Since, the parties have agreed vide clause 63 of the agreement exclude the jurisdiction of all other courts except the



courts at Bahadurgarh and Delhi, this Hon'ble Authority cannot be said to have jurisdiction to adjudicate the present complaint.

9. That complaint in hand is not maintainable before this Hon'ble Authority and thus, the same deserves to be dismissed. It is submitted that the agreement in question pertains to the year 2014, i.e. prior to coming into being of Real Estate (Regulation & Development) Act-2016 filing of complaint before this Hon'ble Authority is not sustainable and in view thereof, complaint deserves to be dismissed on this ground alone.
10. That possession was subject to timely payment and complainant was defaulter in making timely payments to the respondent as per payment plan. Demand has been raised by the respondent-company however, complainant did not pay the amount as per demand raised by the respondent. Further, it is submitted that numerous reminder letters/demand letters were sent to the complainant. Thus, complainant is not entitle for any compensation and present complaint is liable to be dismissed.
11. That complaint is barred by law of limitation, as per complainant's version, the last payment was made by complainant in the year December, 2017. Thus, complaint is time barred, thus, deserves to be dismissed on this score alone.
12. That due to outbreak of pandemic COVID-19 the Govt. has extended



the period of all real estate projects by 6 months. Thus, it could not be said that there has been any delay in the handing over of the possession of unit. The real estate sector has already been passing through very tough time for the last 3-4 years and now since March 2020, due to pandemic of COVID-19, the real estate sector has suffered huge blow and resultantly, real estate sector will take number of years to get recovered from the same. It is also relevant to point out here that in view of COVID-19 situation, the government has already declared COVID-19 period as 'force majeure condition'. But still, the respondent-company, showing its bonafide, is ready to compensate the complainant qua delay in possession.

E. ARGUMENT OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

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 observed 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 Objection 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)

Respondent raised an objection 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 this issue, 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, 2016 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, 2016 provides 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.

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.

G.3. Objection regarding execution of agreement to sell prior to the coming into force of RERA Act, 2016

Respondent in its reply has averred that provisions of RERA Act, 2016 are not applicable on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming



into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of agreements to sell. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd decided on 16.07.2018.**

Relevant part of the order is being reproduced below: -

The RERA Act nowhere provides, nor can it be so construed. that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller

Further, reference can be made to the case titled **M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP &Ors. Etc. 2022(1) R.C.R. (Civil) 357**, wherein the Hon'ble Apex Court has held as under:-



41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for al safeguarding the pecuniary interest of consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory, mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.*

As per the aforesaid ratio of law, the provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the rules applicable to the acts or transactions, which were in the process of the completion though the agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

G.4. Objection raised by respondent that the present complaint is barred by limitation

Respondent had raised objection regarding maintainability of the

complaint on ground of that complaint is barred by limitation.

In this regard, it is observed that as per clause 40(a) of agreement for sale respondent was to handover the possession of the unit to allottee within 24 months from the date of execution of agreement. Agreement for sale was executed inter-se the complainant and respondent on 28.03.2014, as per which possession was to be handed over to complainant by 27.03.2016. However, till date possession has not been handover to complainant. Hence, respondent has failed to fulfil its obligations to hand over the possession of the booked unit in its project within time stipulated in agreement for sale. thus, the cause of action i.e. delay in handing over possession is re-occurring.

In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the Limitation Act applies only to courts and not to the tribunals.

Relevant para is reproduced herein:

" 19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of The Indian Limitation Act 1963, thus, would not be applicable to the



proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

H. OBSERVATIONS OF THE AUTHORITY

13. Proceeding on the merits of the case, it is not disputed between the parties that complainant had booked a unit in the respondent's project on 24.08.2012 by paying Rs. 3,00,000/-. The respondent issued a provisional allotment letter dated 01.11.2013, through which the respondent informed complainant that the process for provisional allotment in respondent's project "Omaxe Shubhangan" will be finalized on 11.11.2013 and allotment shall be on draw of lots basis.
14. Thereafter agreement for sale was executed between complainant and respondent on 28.03.2014 for unit no. RHBH/T-18/302, 3rd floor having a super area of 1280 Sq. Ft. in the respondent's project namely "Omaxe Shubhangan", situated at Sector -4A, Kessar, Bahadurgarh. Complainant had paid Rs.34,48,878/- against basic sale price of Rs. 28,01,029 /-
15. On perusal of the agreement for sale it is observed that as per clause 40(a) of agreement for sale respondent promised to handover the possession of the unit within 18 months from date of signing of



agreement or within an extended period of 6 months i.e. by 27.03.2016. Admittedly till date no offer of possession has been made to complainant. Respondent in its reply taken plea that offer of possession was subject to timely payment by complainant. However, complainant defaulted in making timely payments. Respondent alleged that he had sent numerous demand letters to complainant to pay the amount. In this regard Authority perused that receipts at annexure -C4 reveals that complainant had made all payment as and when demanded. The fact that no interest for any delay is reflected in the demand letters or receipts of paid amount makes it clear that complainant has fulfilled his obligation and made timely payments. Perusal of receipts also reveals that complainant had paid Rs.34,48,878/- (as per receipts attached) that is more than basic sale prices.

16. Respondent has also taken defence that the construction work of project was affected/delayed due to covid-19 out brack. In this regard it is observed that the possession of the unit in question became due on 27.03.2016 and it is a matter of fact that COVID-19 outbreak hit construction activities post 22.03.2020 i.e. nearly four years after lapse of due date of possession. As per ratio of law laid down by Hon'ble Delhi High Court reliance is placed on judgement titled as "*M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.S 3696-3697/2020*" dated



29.05.2020, wherein Hon'ble High Court has observed that:

"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

The possession of the unit had already been delayed for a long period of time even before the COVID-19 halted construction. The respondent had failed to construct the project on time and deliver possession to the complainant. Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition

17. In view of aforesaid observations it is established that respondent failed to fulfill its obligation i.e. to handover possession within stipulated time

A handwritten signature in blue ink, appearing to read 'J. Atwee', is written over a horizontal line.

as provided in the agreement for sale. There is an apparent violation of Section 11(4)(a) of the RERA Act, 2016. In such circumstances, provisions of Section 18 (1) comes into play, as per Section 18(1) of RERA Act, 2016 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 withdraw from the project and seeking refund along with interest on paid amount.

18. The issue related to relief of an allottee to seek refund has dealt with and decided by the Hon'ble Supreme Court in judgement of 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 wherein it has been 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 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."

19. This decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favor of complainant. The 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. 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".

20. 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 29.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.9 %. Complainants in its complainant submitted that he had paid Rs.34,41,878/- and seeking refund for the same. However, perusal of receipts reveals that complainant had paid Rs. 34,48,878/- .Therefore, calculation is made as per amount Rs. 34,48,878/-.

21. Hence, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of Rs. 34,48,878/-/- 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 10.9 % (8.90% + 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 10.9% till the date of this order and total amount works out to Rs. 74,00,062/-as per detail given in the table below:

Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 29.07.2025(Rs.)
1.	3,00,000/-	28.08.2012	4,22,771/-
2.	1,80,000/-	26.11.2012	2,48,825/-
3.	3,13,628/-	14.06.2013	4,14,815/-
4.	9,690/-	20.07.2013	12,712/-
5.	4,26,654/-	18.04.2014	5,25,064/-
6.	4,26,655/-	13.11.2014	4,98,436/-
7.	3,30,654/-	19.05.2015	3,67,819/-
8.	3,30,653/-	17.08.2015	3,58,931/-
9.	3,32,350/-	09.11.2015	3,52,436/-
10.	2,96,230/-	16.01.2016	3,08,117/-
11.	1,49,364/-	24.07.2016	1,46,883/-
12.	1,55,000/-	18.11.2017	1,30,115/-
13.	1,98,000/-	21.12.2017	1,64,260/-
	Total Principle amount= Rs.34,48,878/- /-		Interest= Rs. 39,51,184/-
	Total amount to be refunded by respondent to complainant = Rs. 74,00,062 /-		

22. Complainant is seeking compensation of Rs.2,00,000/- for unfair trade practice, mental harassment, agony, and a sum of Rs.75,000/- as

litigation expenses. In this regard 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.**" 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 complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation..


I. DIRECTIONS OF THE AUTHORITY

23. 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. 74,00,062/- to the complainant. It is clarified interest shall be paid up till the time period as provided u/s 2(z) of RERA Act, 2016
 - (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.

24. **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]

