



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2369 of 2023
Date of filing:	20.10.2023
Date of first hearing:	29.11.2023
Date of Decision:	27.05.2025

Yogender Kumar

R/o- 649/33, Vishwakarma Nagar,
Math Mandi, Rohtak

....COMPLAINANT

VERSUS

M/s Omaxe Pvt. Ltd.
7 Local Shopping Centre, Kalkaji,
New Delhi-110019

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of decision: 27.05.2025

Present: None for complainant

Adv. Saurav Duvedi, proxy for Adv. Arjun sharma, Ld. Counsel
for respondent through VC

Geeta Rathee

ORDER

1. Present complaint was filed on 26.07.2023 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, 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, Sector 4A, Bahadurgarh
2.	RERA registered/not Registered	Not registered.
3.	Unit no.	501
4.	Unit area	1280 sq. ft.
5.	Date of apartment buyer agreement	08.04. 201 4
6.	Decmed date of possession	07.04.2016 (as per clause 40(a) Clause 40 (a)



		<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>
7.	Date of allotment	12.04.2014
8.	Total Sale Consideration	Rs. 31,17,029/-
9..	Amount paid by complainant	Rs. 30,45,853/- (as per receipts)
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT

3. Facts of complaint are that complainant had purchased an apartment in respondent project namely "Omaxe Shubhangan" situated at Sector 4A, Bahadurgarh. Apartment buyer agreement was executed between complainant and respondent on 08.04.2014. An apartment no. 501, Tower no. 18, 5th floor, admeasuring area 1280 sq. ft. was allotted to complainant. Complainant paid Rs. 29,33,358/- (as per receipts it is Rs. 30,45,853/-) towards total sale price of Rs, 31,17,029/-
4. That as per Clause 40(a) of the Apartment Buyer's Agreement dated 08.04.2014, the respondent was under an obligation to complete the construction within the period of 18 months from the date of execution of the said agreement with a further grace period of 180 days and the said unit should have been offered for possession and handed over to the complainant as and when ready. Therefore, as per the said clause the



due date of possession comes out to be 07.04.2016. However, complainant has never been offered possession till today, as mentioned above and there is a delay of more than 7 years in handing over the possession.

5. That at the site, the project is far from completion and the complainant is suffering because of undue delay on the part of the respondent-Promoter in completion of the whole project. Further, complainant stated that respondent-promoter has failed to abide by the contractual terms and stipulated in the agreement and it is in breach. The cause of action to file the complaint is continuing, in as much as despite receipt of almost entire sale consideration and lapse of more than 9 years from the due date of handing over possession, had not offered possession to the complainant. Therefore, the complainant is entitled to invoke Section 18 of RERA and interest for delayed possession.

C. RELIEF SOUGHT

6. Complainant in its complaint has sought following reliefs:
- i. The respondent-promoter has misappropriated the amount i.e. Rs. 29,33,358/- paid by the complainant and the amount has not been put to use for timely development of the project. Therefore, complainant is entitled to compound interest @ 18% from the due date of delivery of possession till actual handing over of physical possession as per the terms of agreement which would come to Rs. 36,96,031/-

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- and the total relief claimed amount would come to Rs. 66,29,389/-.
- ii. The complainant is entitled to get compensation for harassment and mental agony for last 10 years to the tune of Rs. 50,00,000/- along with litigation expenses to the tune of Rs. 1,00,000/-.
- iii. Respondent has failed to honor the terms and conditions of the Apartment Buyer's Agreement and other statutory conditions/ approvals and thus, it is liable to be proceeded against under the provisions of Real Estate (Regulation and Development) Act, 2016.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 13.05.2024 pleading therein:

7. The 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 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 to 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 the present complaint has been filed by the complainant, inter-alia, seeking directions against the respondent to pay compound interest @ 18% on the amount of Rs. 29,33,358/-, from due date of delivery till actual handing over of physical possession of residential apartment booked by the complainant, and to pay compensation for harassment and mental agony of Rs.50 Lacs along with litigation expenses of Rs.1 Lac. Concededly, the complainant had purchased the rights of their predecessor-in-interest namely Mr. Deepak Kumar. It is apposite to mention here that a joint request form dated 04.12.2012 was submitted by Mr. Deepak Kumar and complainant for assignment of allotment rights in favour of the complainant. Along with the said request form, the complainant also submitted an 'AFFIDAVIT CUM INDEMNITY'. Perusal of the said affidavit cum indemnity would reveal that the complainant had agreed that he shall not claim compensation for any delay in offering the possession of the said unit by the respondent.
10. That respondent vide agreement dated 08.04.2014 allotted residential apartment No. "RHBH/TOWER-18/FIFTH/501" having super area admeasuring approx. 1289sq.ft. in the residential project



"SHUBHANGAN" situated in sector 4-A, Kassar Road, Bahadurgarh for a total amount of Rs.31,17,029.20/-. However, the said amount of Rs.31,17,029.20/- 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, the 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.

11. That the Complaint filed by the Complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

13. 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. OBJECTIONS RAISED BY RESPONDENT AND FINDING
OF THE AUTHORITY ON SAME**

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.

G. 3. Objection raised by respondent that complainant is not entitled to claim compensation for delay in offering of possession as complaint vide AFFIDAVIT CUM INDEMNITY agreed to not claim any compensation for delay in handing over of possession

Respondent in its reply submitted that there is an "AFFIDAVIT CUM INDEMNITY" agreement between complainant and respondent wherein complainant had agreed that he shall not claim compensation for any delay in offering the possession of the unit by respondent. In this regard Authority relies upon judgment of Hon'ble Supreme Court **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution



of indemnity cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

"Indemnity-cum-undertaking

30. The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre- requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

Reference can also be made to the directions rendered in the **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** by the Hon'ble Apex Court wherein it was held that a term of a

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contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Further, it is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession. In light of the aforesaid discussion and judgments, the Authority is of the view that the aforesaid execution of indemnity-cum undertaking does not preclude the complainant-allottee from exercising his right to claim delay possession charges as per the provisions of the Act.

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:

14. Perusal of complaint file it reveals that complainant had purchased rights of unit from original allottee i.e. Deepak Kumar vide joint request form dated 04.12.2012. Apartment buyer agreement executed between complainant and respondent on 08.04.2014, vide which an apartment no. 501 in Tower no. 18, 5th floor, admeasuring area 1280 sq. ft. was allotted to complainant in respondent project namely "Omaxe Shubhangan" situated at Sector 4A, Bahadurgarh.



15. As per clause 40(a) of agreement to sell 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. However, admittedly till date no offer of possession has been made to complainant meaning thereby that respondent has failed to fulfill its obligation as provided in the agreement for sale and it is clear violation of section 11(4)(a) of the RERA Act, 2016. 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. 07.04.2016 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(zd) of the Act which is as under:

(zd) "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;

16. 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".

17. 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. 27.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%. As per facts complainant had paid an amount of Rs. 29,33,358/- however as per receipts annex with complaint file complainant had paid Rs.30,45,853/- to



respondent. Therefore interest amount is calculated as per receipts amount i.e. Rs.30,45,853/-.

18. Authority has calculated the interest on the total paid amount from the deemed date of possession i.e. 07.04.2016 till the date of this order i.e. , 27.05.2025 at the rate of 11.10% and said amount works out to be Rs. 30,26,442/- as per detail given in the table below:

Sr. No.	Principal Amount in (Rs.)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 27.05.2025(Rs.)
1.	323500	07.04.2016	328391
2.	152288	10.10.2017	129072
3.	426500	07.04.2016	432948
4.	294326	07.04.2016	298776
5.	200139	13.11.2017	167559
6.	427000	07.04.2016	433455
7.	300000	07.04.2016	304535
8.	180000	07.04.2016	182721
9.	296000	07.04.2016	300475
10.	296100	07.04.2016	300576
11.	150000	11.07.2016	147934
	Total Principle amount = Rs.30,45,853/-		Total= Rs.30,26,442/-
Monthly interest= Rs. 27,788/-			

19. Complainant is also seeking compensation of Rs.50,00,000/- for mental harassment, mental agony, pain suffering and humiliation and a sum of Rs. 1,00,000/- as litigation expenses. 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 complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

20. 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 pay upfront delay interest of Rs. 30,26,442/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of Rs. 27,788/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.



(ii) Respondent shall offer possession of the plot to complainant within 30 days from the date of obtaining occupation certificate.

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

21. **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]