



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	742 of 2024
Date of filing:	18.06.2024
Date of first hearing:	13.08.2024
Date of Decision:	27.05.2025

Sanjay Khatri

**R/o Ismaila(9-Biswa), District Rohtak,
124517, Haryana**

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

Date of decision: 27.05.2025

Present: Adv. Sahil Dagar, Ld. counsel for complainant through VC
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, details of sale consideration, 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.	502
4.	Unit area	635 sq. ft.
5.	Date of allotment	13.08.2015
6.	Date of builder buyer agreement	19.04.2016
7.	Deemed date of possession	19.04.2018(as per clause 40(a)) Clause 40 (a) " The Company shall complete the



		<i>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.	Total Sale Consideration	Rs. 15,97,200/-
9..	Amount paid by complainant	Rs. 14,06,369/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT

3. Facts of complaint are that original allottees i.e. Mr. Atam Parakash had booked a unit in the respondent's project namely “Omaxe Shubhangan”, situated at sector 4A, Bahadurgarh on 03.05.2012 by paying an amount of Rs. 2,00,000/-.
4. That Mr. Atam Parakash then transferred the rights of unit to Mr. Sachin Sharma S/O Mr. Om Prakash Sharma. Thereafter, Mr. Sachin Sharma transferred the allotment rights and interests to complainant i.e. Mr. Sanjay Khan Atri vide request form dated 28.09.2013. An unit no. 502, admeasuring area 635 sq. ft. was allotted to complainant. Builder buyer agreement was executed between complainant and respondent on 19.04.2016. Complainant had paid Rs. 14,06,369/- against total sale price of Rs. 15,97,200/-
5. That it is submitted that the respondent was raising regular payment invoices but the status of the construction was on hold. The genesis of



the present complaint is gross indifference, refusal and failure of various obligation on the part of respondent company on various fronts which clearly tantamount to unfair trade practices.

6. That as per the Clause 40 (a) of the builder buyer agreement the respondent has to give the possession of the said Flat in 24 months from the signing of the BBA, i.e. by the end of April 2018. However, even after a lapse of 73 months the respondent has not even completed the basic constriction of the said project.
7. That the Respondent is not complying with terms and conditions of the builder buyer agreement dated 19.04.2016. The complainant has made a payment of more than 14 lakh rupees and till now there is no sign of construction or possession in near future.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

- i. Direct the respondent to refund the total deposited amount, that is Rs. 14,06,369/- (Rupees Twenty Five Lakh Ninety Nine Thousand Three Hundred and Seventy) along with interest @ 18% p.a. from the date of deposit till the date of refund to the complainant;
- ii. 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 Respondents.




- iii. Direct the respondent to pay a sum of Rs. 75,000/- (Rupees Seventy Five thousand only) to the complainant towards the cost of litigation.
- iv. 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 07.11.2024 pleading therein:

8. That the present complaint is barred by limitation. It is submitted that the complainant has filed the present complaint, admittedly after lapse of 6 years from the date of allotment. Thus, the complaint is liable to be dismissed on this ground alone.
9. That the complainant has sought refund and compensation in the same complaint. As per settled law, claim for compensation has to be filed before the Adjudicating Officer and as such, the consolidated claim in present format is illegal and not maintainable. Hence, complaint ought to be dismissed / returned on such ground alone.
10. That the builder buyer agreement was signed on 19.04.2016 and as per clause 40(a) is 24 months i.e., the physical possession had to be handed over on or before 19.04.2018 subject to force majeure conditions and the allottee making timely payments. It is denied that the respondent company has not completed the basic construction of the project. It is



stated that the construction is at full swing in the concerned project and possession will be handed over in due time after obtaining necessary approvals from the concerned authorities.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

12. 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 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 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

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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

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:

13. It is a matter of record that original allottees i.e. Mr. Atam Parakash had booked a unit in the respondent's project namely "Omaxe Shubhangan", situated at Sector 4A, Bahadurgarh on 03.05.2012. Thereafter, Mr. Atam Parakash then transferred his rights of unit to Mr. Sachin Sharma and Mr. Sachin Sharma, who further transferred the same in favor of complainant on 28.09.2013. Builder buyer agreement was executed between complainant and respondent on 19.04.2016 and an unit no. 502, admeasuring area 635 sq. ft. was allotted to complainant.



14. As per clause 40(a) of agreement, respondent was under an obligation to deliver possession within 24 months, i.e., latest by 19.04.2018. However, admittedly respondent till date has not offered possession of unit to complainant as it has not received occupation certificate from competent Authority. Complainant had paid a huge amount of Rs.14,06,369/- to the respondent to get possession of unit. Though, respondent in its reply has stated that construction is going on at full swing, it has failed to give dedicated date in near future for completion of project. In such circumstances complainant be forced to wait endlessly for possession against his wishes. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for more than seven years does not wish to wait for a further uncertain amount of time for a valid possession. Complainant is as per Section 18(1) of RERA Act, 2016 entitled to exercise his rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.
15. Further, 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 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.”

16. The 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 favour of complainant. The definition of term ‘interest’ is defined under Section 2(z a) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

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(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;

17. 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".

18. 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%.

19. Thus, 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.14,06,369/- 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% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to Rs.28,24,276/-as per detail given in the table below:

Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 27.05.2024 (Rs.)
1.	87300	12.08.2017	75558
2.	135000	15.05.2018	105511
3.	200000	07.05.2012	290060
4.	165815	03.08.2016	162371
5.	83000	15.05.2017	74083
6.	163340	12.04.2016	165561
7.	165000	14.03.2017	150384
8.	163145	17.09.2015	175683
9.	164769	15.11.2016	156136
10.	79000	11.04.2018	62560
	Total Principle amount= Rs.14,06,369/-		Interest= Rs. 14,17,907/-
	Total amount to be refunded by respondent to complainant = Rs.28,24,276/-		

20. Complainant is also seeking compensation of Rs.2,00,000/- for mental harassment, torture, agony, pain suffering and humiliation 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.

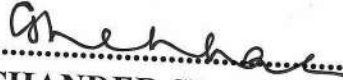
I. DIRECTIONS OF THE AUTHORITY

21. 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.28,24,276/- the complainant. It is clarified that interest shall be paid up till the time period as provided under sections 2(za) 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.



22. **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]

