HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2108 of 2023**
Date of filing:	**10.10.2023**
Date of first hearing:	**09.11.2023**
Date of Decision:	**01.07.2025**

Amit Girdhar ....COMPLAINANT
R/o H.No.5567, D1block,
1st floor, Ansal City , Panipat
125001

VERSUS

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

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

Date of decision: 01.07.2025

Present: Adv. Arjun Kundra, Ld. Counsel for Complainant
Adv. Arjun Sharma, Ld. Counsel for Respondent through VC

ORDER

1. Present complaint was filed 10.10.2023 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 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	Registered (202 of 2017)
4.	Unit no.	603
5.	Unit area	391 sq. ft.
6.	Date of booking	10.05.2012
7.	Date of allotment	10.08.2015
8.	Agreement for sale	11.09.2018

9.	Deemed date of possession	3months after obtaining occupation certificate
10.	Total Sale Consideration	Rs. 16,47,600/-
11.	Amount paid by complainant	Rs. 14,77,639/-(as per pleading)
12.	offer of possession	Not made

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 complainant booked an apartment on 10.05.2012 in respondent project by paying Rs. 2,00,000/-.Provisional allotment letter was issued on 10.08.2015 wherein unit no.603, admeasuring area 391 sq. ft. was allotted to complainant. Complainant had paid Rs. 14,77,639/- against total sale price of Rs.16,47,600 /-

5. That the respondent continued to issue demand letters one after another, however there was no sign of delivery of the apartment as the construction activity on the project site was next to nil. Further, no agreement for sale was executed between parties.

6. That again for three years the respondent did not come forward with any offer for the delivery of possession, nor any agreement was signed by it with the complainant. The complainant requested the respondent to either deliver the possession of the unit or refund his paid amount immediately. When the complainant put this condition before the

respondent, it came forward with the pretext for execution of "Agreement for sale", as precondition for delivery of the unit. Therefore, agreement to sell was executed between complainant and respondent on 11.09.2018.

7. The respondent had assured the complainant that post the execution of the agreement, complainant shall be offered the possession of the unit within no time. The complainant had made the booking for the allotment of the apartment for his residential personal needs and nothing more, but for the past 10 years now he has neither received the possession of the unit, nor there is any sign of the completion of the project anytime soon.

8. That although the agreement for sale dated 11.09.2018, was executed post the promulgation of the RERA Act, 2017, the same is not in the prescribed format. That no dates for the manner and payment of installments are mentioned in the agreement or the schedule, nor the promised date of possession is specified rather, a vague statement is given that the possession of the apartment shall be given within the time/schedule undertaken before the authorities. Further, there was no clarity given by the respondent in the agreement regarding the delivery of the unit. The complainant is thus aggrieved, as the agreement for sale is in complete violation of the Section 13(2) of the RERA Act, 2016.

9. The project remains far from completion even today. The complainant

has requested the respondent several times for the delivery of possession of the apartment/unit or refund of his money with prescribed rate of interest but all his requests have fallen on deaf ears. The complainant is entitled to the refund of his money along with interest as already inordinate delay has occurred in the present case and he can wait no longer. The complainant till date has already made the payment to the tune of Rs.14,77,639/-

10. That as held by the Hon'ble Apex Court in the case of Fortune Infrastructure and Ors. us. Trevor D'Lima and Ors., the reasonable time to be assumed in the absence of any agreement is 3 (three) years. In the present case, the application for booking was made by the complainant on 10.05.2012, thus, it was required of the respondent company to have completed the development of the project latest by 10.05.2015. The copies of the payment receipts and the statement of account has been annexed herewith as Annexure C-5. The complainant has never defaulted in any installment as there was a lingering threat of delay penalty of 18%. It is important to highlight here that the complainant has made all the payments before time and majority of the consideration was collected by the respondent by 2017 itself.

C. Relief Sought

11. Complainant in its complaint has sought following reliefs:

i. Direct the respondent to refund the sum of Rs 14,77,639/- to the

complainant, along with prescribed rate of interest as per the RERA Act, 2016 from the date of respective payment of installments until the actual realization; and

ii. 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

12. Learned counsel for the respondent filed detailed reply on 20.05.2024 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 agreement to sell executed on 11.09.2018 was without any protest and and till filing of the present case on 16.09.2023 not even once the complainant had raised the issue of delay in execution of agreement for sale dated 11.09.2018. That no document/correspondence has been annexed by the complainant along with his complaint to show that the complainant ever raised the issue of delay in executing the agreement for sale qua unit in question.

c) That allegation made by the complainant that agreement for sale dated

11.09.2018 is not as per the prescribed format, as neither the possession date has been specified nor schedule for payment of installments has been specified is also vague and without bothering to see the model agreement for sale provided in Haryana Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the '2017 Rules'). In the humble submission of the respondent, perusal of agreement for sale dated 11.09.2018 executed between the parties would reveal that there is no variation in the said agreement from the standard and approved agreement as provided in Annexure 'A' of 2017 Rules.

d) That the primary ground on which the complainant is seeking refund of Rs.14,77,639/- is that there has been delay in offering the possession. In the humble submission of the respondent, parties out of their free will have executed agreement for sale and therefore, are bound by its terms and conditions. Clause 7 of the said agreement provides for possession of unit. As per clause 7.2(B) of agreement the respondent has to offer possession of unit in question within 3 months after obtaining occupation certificate of the unit in question. Since, in the present case, occupation certificate of unit in question has not been received yet, therefore, it is wrong to allege that the possession has been delayed by the respondent.

e) That. Authority does not have the territorial jurisdiction to entertain

and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh & Jhajjar vide clause 33 of agreement for sale. Thus, from the bare reading of the aforesaid clause it is clear that the parties have unequivocally agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Jhajjar. It is well settled law that where there is more than one court having simultaneous jurisdictions then the parties by mutual agreement can exclude the jurisdictions of the court and can agree for the other court to have jurisdiction for adjudication of the dispute.

f) That due to the pandemic of covid-19 the construction activity in the project in question had come to a standstill and it was only after lots of efforts that the things have gotten back to track. Still further, even the Government of India as well as the present Authority realizing the difficulties being faced by the Real Estate Sector due to the pandemic had invoked a force majeure clause, thereby granting some relief to the Real Estate Industry.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

14. 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 OBJECTION RAISED BY THE RESPONDENT.

Objection regarding territorial jurisdiction

One of the averment of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties vide clause 33 of agreement to sell have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. Perusal of agreement to sell it is revealed that there is no clause 33 in agreement to sell. Neverthless, 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.

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 :

15. That complainant had booked an apartment on 10.05.2012 in respondent project by paying Rs. 2,00,000/-.Provisional allotment letter was issued on 10.08.2015 wherein unit no. 603, admeasuring area 391sq.ft. in real estate project "Omaxe Shubhangan", Bahadurgarh was allotted to complainant. Agreement to sell was executed between complainant and respondent on 11.09.2018.

16. Authority observed that agreement to sell was executed on 11.09.2018 i.e. after lapse of 6 years from date of booking date which is an unreasonable time for signing of agreement for sale. Perusal of complainant file reveals that complainant had paid Rs.14,50,139/- till 11.09.2018 i.e. till execution of agreement for sale. As per clause 7.2(B) of agreement for sale respondent shall offer possession of unit within three months after obtaining occupation certificate. This possession clause itself shows that this agreement for sale is vague ,one sided and highly loaded in favor of respondent as there is no specific time given regarding possession of unit. Authority is not hesitant to observe that in order to evade its liability under RERA Act, 2016 respondent executed this agreement to sale on 11.09.2018 after 6 years of booking and encorporated the vague and open ended possession clause. By then complainant had already paid substantial amount, thus the respondent was in a dominant position at the time of execution for agreement for

sale, and complainant had no choice but to sign the same on doted lines. Hence the possession clause in the agreement is bad in law and due date shall be reckoned from date of allotment. Authority further places reliance upon judgement of Hon'ble Supreme Court titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr, 2018 STPL 4215 SC,** where the Hon'ble Apex Court had made the following observation:

> *"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*

In view of the ratio of law laid down by Hon'ble Supreme Court, in absence of specific clause with respect to handing over possession, 3 years is taken to be reasonable time to handover possession to allottee. In present case to allotment letter was issued on 10.08.2015, therefore 09.08.2018 shall be considered deemed date for handing over possession of unit.

17. Authority further observes that the respondent has taken a defence that the construction work was affected/delayed due to covid-19 outbrack. In

this regard it is observed that the possession of the unit in question became due on 09.08.2018 and it is a matter of fact that COVID-19 outbreak hit construction activities post 22.03.2020 i.e. nearly two years after lapse of due date of possession. 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. Reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as "***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (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.

18. It is matter of record that the respondent failed in its obligation to handover possession till date and complainant has lost all faith in the respondent promoter and wish to withdraw from its project. With regard to rights of an allottee who after lapse of due date wish to withdraw from the project. 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."

19. 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. Admittedly construction/development of unit is not completed and no specific timeline has been given by respondent till date to handover the possession of unit. Complainant does not want to wait for indefinite time and wishes to withdraw from the project of the respondent. Hence, 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 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;

20. 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".*

21. 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. 01.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%. Further, complainant pleaded that he had received a Rs. 27,500/- as credit note. However, credit note is not the actual amount paid by him. Refund can be allowed only to the amount which complainant complainant actually pays. Therefore, amount is calculated as per amount paid by complainant.

22. 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.14,50,139/- 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 11.10% (9.10% + 2.00%). 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. 28,91,068 /-as per detail given in the table below:

Sr. No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 01.07.2025 in (Rs.)
1.	182000	27.05.2019	123315
2.	200000	10.05.2012	292006
3.	158167	14.01.2014	201395
4.	142211	12.09.2016	139041
5.	169711	28.12.2016	160406
6.	170000	17.05.2017	153442
7.	169423	27.09.2017	146068
8.	258627	29.08.2017	225256
	Total Principle amount = Rs. 14,50,139/-		Interest=Rs. 14,40,929/-
Total amount to be refunded by respondent to complainant = Rs.28,91,068 /-			

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.28,91,068/- to the complainant. 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.

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

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CHANDER SHEKHAR
[MEMBER]

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Dr. GEETA RATHEE SINGH
[MEMBER