



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3112 of 2022
Date of filing:	13.12.2022
Date of first hearing:	02.05.2022
Date of Decision:	01.07.2025

Satish Kumar

V.P.O. Bhadani, Teh. Jhajjar

Haryana, 124103

....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: 01.07.2025

Present: Adv. Reema Luthra, Ld. Counsel for complainant through
VC

Adv. Munish Gupta, Ld. counsel for respondent through VC

Satish

ORDER

1. Present complaint was filed 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	Registered (202 of 2017)
3.	Unit no.	403
4.	Unit area	930 sq. ft.
5.	Date of agreement for sale	02.05.2016



6.	Due date of possession	01.05.2018 as per clause 40(a) Clause 40 (a) “ 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.”
7.	Total Sale Consideration	Rs. 22,85,350/-
8.	Amount paid by complainant	Rs. 22,26,299/- (as per receipts)
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the complaint are that original allottee Mr. Kulbhushan Khurana booked a flat on 08.06.2012 by paying Rs.2,50,000/- in respondent's project namely Vedanta Homes, situated at Sector 4A, Bahadurgarh. Thereafter, vide request form dated 06.10.2012 original allottee i.e. Mr. Kulbhushan Khurana transferred its right of unit in favor of complainant i.e. Mr. Satish Kumar.
4. That complainant received a demand letter dated 29.05.2013 from the respondent whereby the respondent demanded a amount in terms of the payment plan agreed by the complainant so as to enable him to be eligible to participate in the draw of allotments of plot scheduled for 13.06.2013.
5. That subsequently again a letter dated 21.09.2013 was issued by the respondent to the complainant, intimating regarding the provisional



allotment of unit in respondent project namely "SHUBHANGAN" situated at Sector-4A, Kassar Road, Tehsil Bahadurgarh, District Jhajjar, Haryana.

6. Agreement to sell between complainant and respondent was executed on 02.05.2016. Unit no. 403, in tower no.19 was allotted to complainant. Complainant had paid Rs.22,26,299/- towards total sale price of Rs.22,85,350/-
7. That despite making a commitment to handover the possession of the allotted unit within 18 months from May, 2016, even after receiving the substantial amount of money from the complainant till 14.05.2018 respondent failed to fulfill its obligation.
8. That despite visiting the office of the respondent numerous times the officials of the respondent have always gave an assurance that the possession of unit shall be done soon but failed to keep its words.
9. That constrained by the inaction and conduct of the respondent, complainant was constrained to issue and serve upon the respondent a legal notice dated 30.04.2019, notice was posted through speed post on 30.04.2019 itself. The legal notice was served upon the address of the registered office of the respondent on 01.05.2019. However, another notice sent at the office of the respondent at the second address was returned unserved.
10. That despite lapse of several years, respondent has failed to allot and



handover the possession of plot of land in the said project to the complainant, despite the fact that the respondent have received about 99% of the total sale consideration of the said unit, in terms of the booking and allotment. The complainant is ready with the balance sale consideration, to be payable to the respondent, once the possession of the flat is offered and the demand of money is raised by the respondent.

C. RELIEF SOUGHT

11. Complainant in its complaint has sought following reliefs:
- i. Direct the respondent to handover the possession of the Unit No. 403, Tower No. 19, 4th Floor, in "OMAXE SHUBHANGAN" BAHADURGARH, to the complainant, in terms of the booking application/agreement, and to accept the balance amount of Rs. 59,051/- from the complainant.
 - ii. Direct the respondent to execute the necessary title deeds/ transfer documents/ ownership documents of such flat, in favor of the complainant.
 - iii. Award interest @24% p.a. on the sum of Rs.22,26,299/-w.e.f 14.05.2018 till the date of handing over of the possession for causing delay in offering the allotment and possession of the flat, as agreed in terms of the booking application.
 - iv. Award compensation at such rates, which this Hon'ble Authority deems fit and proper, in favor of the complainant and against the



respondent for willfully and deliberately delaying the possession of the terms of the booking/ agreement.

- v. Award cost of the present proceedings, including the litigation charges, incurred by the complainant.
- vi. Any other relief which this Hon'ble Authority deems fit and proper, in the light of the above given facts and circumstances of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 18.10.2023 pleading therein:

- 12. 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.
- 13. 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.

14. That the 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 2016, 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, the complaint deserves to be dismissed on this ground alone.

15. That at the time of booking, gold coin of 10gm worth Rs. 27,500/-, was given to the original allottees. It is relevant to mention here that the unit in question was booked by Kulbhushan Khurana along with present complainant in the year 2012. Thereafter as per request made by Kulbhushan Khurana i.e. original allottee the rights of unit was endorsed in the favour of present complainant.

16. That the complaint is barred by law of limitation, as per complainant's version, the last payment was made by the complainant in the year May, 2018. Thus, the complaint is time barred, thus, deserves to be dismissed on this score alone.

17. That the complainant is himself a defaulter in the present complaint as various reminders and demand letters were sent to the complainant. The unit met with cancellation various times due to non-payment of



outstanding dues by the complainant.

18. That the complaint is also liable to be dismissed, being full of bundle of lies. It is submitted that the complainant has alleged that he was to be handed over physical possession. The same is a blatant lie on the face of it, as not even a single document/letter has been attached with the complaint to substantiate that the complainant ever raised any such issue. All these facts, alongwith perusal of the preceding paragraphs, make it crystal clear that it is only under ill-advice that the present complaint has been filed, to gain unlawfully by shifting the blame upon the respondent, although in the present case, it is the complainant only, who is defaulter in not coming forward for making the pending payment, despite repeated request letters/reminders.

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

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

F. ISSUES FOR ADJUDICATION

20. 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/TTCP 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)

Another averments of the respondent is that dispute ought to be referred under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015) as per clause 63 of agreement for sale dated 02.05.2016. In this regard Authority observe 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 the present complaint is barred by limitation

Respondent has also 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 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.

G.4. Objection regarding execution of BBA 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. 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 builder buyer



agreements. 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.

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:



21. Perusal of complaint file reveals that original allottee Mr. Kulbhushan Khurana booked flat on 08.06.2012 by paying Rs.2,50,000/- in respondent's project namely "Vedanta Homes" situated at Sector 4A, Bahadurgarh. Vide request form dated 06.10.2012 rights of unit is transferred in favor of complainant. Thereafter vide allotment letter dated 29.05.2013 complainant was informed that allotment shall be on draw of lots basis and on same day an intimation of due installments letter was also issued to complainant providing for a payment plan. Subsequently another letter dated 21.09.2013 was issued to complainant again informing him that allotment shall be by way of draw of plots and allotment process shall be finalized on 07.10.2013. This letter was also accompanied with an intimation of due installment letter of the same date and for apartment no. VHBH/P/73 having super area measuring 930 sq. ft. in the real estate project "Omaxe Shubhangarh," Bahadurgarh. Subsequently an agreement to sell was executed between complainant and respondent on 02.05.2016 for unit no.403, measuring area 930sq.ft. in the real estate project Omaxe Shubhangarh, Bahadurgarh.

22. However, respondent in its reply has averred that complainant is himself a defaulter in the present complaint, who failed to fulfill his obligation which is to make timely payments, despite numerous reminders having been served upon him. Resultantly, the unit of complainant was cancelled various times. In this regard it is observed that no reminder, demand



letters or cancellation letter issued by the respondent to complainant have been attached with complaint file to substantiate/establish the averments of the respondent. Hence, same are rejected. Further, perusal of receipts attached with the complaint file reveals that Rs. 22,26,299/- has already been paid by the complainant to the respondent against total sale price of Rs. 22,85,350/-. Complainant also sent legal notice dated 30.04.2019 to respondent, however he received no response from respondent in this regard.

23. As per clause 40(a) of agreement to sell dated 02.05.2016 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 01.05.2018. There is no document placed on record to show/prove that construction of the unit/project is complete or whether any document/approval regarding completion/occupancy has been issued by any competent authority. Further, till date no offer of possession has been made to complainant. In view of the above it is concluded that the respondent has failed to fulfill its obligation to offer timely possession of unit 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 due date i.e. 01.05.2018 till the date on which a legally valid offer of possession is made to complainant after obtaining occupation certificate. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "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".

24. 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%.

25. Authority has calculated the interest on the total paid amount from the deemed date of possession i.e. 01.05.2018 till the date of this order i.e. 01.07.2025 at the rate of 11.10% and said amount works out to be Rs. 17,72,706/- 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 01.07.2025(Rs.)
1.	108646	01.05.2018	86533
2.	263300	01.05.2018	209709
3.	261850	01.05.2018	208554
4.	258000	01.05.2018	205487
5.	116443	14.05.2018	92282
6.	263658	01.05.2018	209994
7.	250000	01.05.2018	199116
8.	262332	01.05.2018	208938



9.	216980	01.05.2018	172817
10.	108646	01.05.2018	86533
11.	116444	01.05.2018	92743
	Total Principle amount = Rs. 22,26,299/-		Total interest= Rs. 17,72,706/-
Monthly interest= Rs. 20,311/-			

26. Complainant is also seeking compensation on account of delay in handing over possession and 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 compensation and litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

27. 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.17,72,706/- 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 20,311/- 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 make a legally valid offer possession of the unit to complainant within 30 days from the date of obtaining occupation certificate. Complainant shall accept the same within next 30 days. Respondent is further directed to get the conveyance deed registered as per provision of Section 17 (1) of RERA Act, 2017 i.e. within 3 months from date of issue of occupation certificate.
- (iii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession. However, respondent shall not charge anything that is not a part for agreement for sale.



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

Chander Shekhar
CHANDER SHEKHAR
[MEMBER]

Dr. Geeta Rathee Singh
Dr. GEETA RATHEE SINGH
[MEMBER]

