HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**744 of 2024**
Date of filing:	**23.05.2024**
Date of first hearing:	**06.08.2024**
Date of Decision:	**18.11.2025**

Poonam Chawla
R/o House No. -159, Krishna Colony,
Bhiwani-127021,Harana

....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** **Member**
Chander Shekhar **Member**

Date of decision: 18.11.2025

Present: Adv. Akanksha Yadav , Ld. Counsel for Complainant
Adv. Manjinder Kumar, Ld. Counsel for Respondent through VC

ORDER

1. Present complaint was filed on 23.05.2024 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.	VHBH/TOWER-5/NINTH/901
4.	Unit area	692 sq. ft.

5.	Date of allotment/agreement signing letter	08.10.2018
6.	Date of Agreement for sale	17.05.2019
7.	Deemed date of possession	Within three months after obtaining occupation certificate Clause 7.2(B) *"upon obtaining the occupation certificate or part thereof of building blocks in respect of Group Housing/ Commercial/IT Colony/ Industrial/ any other usage (as the case may be) along with parking (if applicable) shall offer in writing the possession of the unit/ apartment within three months from the date of above approval".*
8.	Total sale Price	Rs.29,27,140/-
9.	Amount paid by complainant	Rs. 25,03,459/-
10.	Offer of possession	Not mad

B. FACTS OF THE CASE AS STATED IN COMPLAINT

3. That complainant had booked a unit in the year 2018 in respondent's project namely 'Omaxe Shubhangan' Sector-4A, Kassar Road, Bahadurgarh. Allotment/agreement signing letter was issued on 08.10.2018. Thereafter, agreement for sale was executed on 17.05.2019 for unit no. VIIBH/TOWER-5/NINTH/901 having carpet area 692 sq.ft. Complainant had paid Rs.25,03,459 /- against total sale price of Rs. 29,27,140/-

4. That respondent had failed to deliver the possession of the apartment to the complainant within the promised time frame. As mentioned in the clause 5 of the agreement "Time is essence". Possession of unit has been due since May 2021, however till date, no legal offer of possession has been made to complainant. Complainant had made all the payments on time Respondent had delayed the construction and development of the project.
5. Complainant had requested respondent numerous time for the delivery of possession of the apartment/unit or refund of her money.
6. Project is nowhere near completion, and the possession is not expected any time soon. There is a delay of more than five years and respondent is issuing continuous letters threatening the complainant with cancellation of the unit if further payments are not paid. In any case, complainant is no longer interested in the project and is thus seeking to withdraw from it and demanding refund of paid amount along with interest.
7. Complainant got served a legal notice dated 29.04.2024 seeking to withdraw and subsequently refund of their payments made in lieu of the unit booked. However, respondent company issued a demand letter dated 08.05.2024 and offered a new payment plan to make a further payment of Rs. 67,974.47/-. It is further submitted that it is no-where states whether the respondent has received the occupation

certificate/completion certificate till date, rather, it is mentioned to forfeit the money on non payment.

C. RELIEF SOUGHT

Complainant in its complaint has sought following reliefs:

i. Direct the respondent to refund the sum of Rs. 23,85,140/- (Rupees Twenty-three Lakhs eighty five thousand one hundred forty only) 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 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

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

8. 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 33 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.

9. That Hon'ble Authority has no territorial jurisdiction to entertain and try the present complaint. Since, the parties have agreed vide clause 33 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.

10. That as per clause 7.2 of the agreement, whereas clearly mention that the promoter, upon obtaining the approved demarcation cum zoning plan/ provision of the services by the colonizer/promoter duly certifying/ part completion certificate, as the case may be, in respect of plotted colony shall offer in writing the possession of plot within three months from the date of above, to the allottee. Therefore, the present complaint is pre-mature and there is no any delay in handing over of the possession of the unit and the question of the refund of the amount does not arise at all.

11. That complainant did not pay the amount as per demand raised by the respondent and she is also defaulter to making the payment as per construction link plan. Further, it is submitted that numerous reminder letters were sent to the complainant. Therefore, she is not entitle for any compensation. Thus, the present complaint is liable to be dismissed.

12. As per the clause of 7.5 of buyer agreement specifically mention that if

complainant wants to withdraw from the project than company is entitle to forfeit the booking amount paid by the respondent complainant i.e., 10% of the total sale consideration. It is relevant to mention here that in this present case complainants itself want to withdraw from the project. Therefore, the answering respondent is entitle to forfeit the booking amount i.e., 10% of the total sale consideration as per the agreement.

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. Counsel for complainant stated that inadvertently it has been mentioned in the relief clause that complainant is seeking relief of Rs.23,85,140/- however in actual complainant had paid Rs. 25,03,459/- and complainant is seeking refund of the said amount along with interest. Respondent counsel also admitted the said amount.

F. ISSUES FOR ADJUDICATION

Whether the complainant is entitled to refund of the amount deposited by her 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 preliminary objection 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 Jhajjar. In this regard it is observed that as per notification no. 1/92/2017ITCP 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 another 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 objection, 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.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as

well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA act; e.g. S. 60 of Competition act, S. 81 of IT Act, IBC, etc. It held "there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act,2016 there is no bar under the RERA Act, 2016 from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act." Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of

flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands 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 respondent's project namely "Omaxe Shubhangan" ,situated at 4A,Kessar Road, Bahadurgarh. The respondent issued a allotment/agreement signing letter dated 08.10.2018 through which the respondent requested complainant to sign each and every page of the allotment letter/ builder-buyer's agreement and get it duly witnessed at proper place and return it back to the company within a period of 15

days from the date of this letter for necessary execution by the company. Thereafter, agreement for sale was executed between complainant and respondent on 17.05.2019 for unit no. VHBH/TOWER-5/NINTH/901.

14. Complainant is aggrieved by the fact that possession has not been offered to complainant till date. Complainant also sent legal notice dated 29.04.2024 to the respondent for the same. Therefore, complainant is seeking refund of paid amount of Rs.25,03,459/- along with interest.

15. On perusal of the agreement for sale it is observed that as per clause 7.2 (B) of agreement for sale respondent promised to handover the possession of the unit within three months after obtaining occupation certificate. Relevant clause of agreement reproduced herein:-

> *"upon obtaining the occupation certificate or part thereof of building blocks in respect of Group Housing/ Commercial/IT Colony/ Industrial/ any other usage (as the case may be) along with parking (if applicable) shall offer in writing the possession of the unit/ apartment within three months from the date of above approval".*

Authority observes that this possession clause itself is arbitrary and unilateral in nature as till dated respondent has not submitted any document which can show whether respondent has received occupation certificate of not and there is also no specific time line mention by

respondent for the same. In these circumstance for deemed date of possession Authority relies upon judgment 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 i.e., the possession was required to be given by last quarter of 2014."*

Therefore, in view of above observation made 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. Thus, respondent should have offered possession to the allottee latest within 3 years of the agreement for sale (17.05.2019), i.e. latest by 17.05.2022. However, it is not disputed that till date no offer of possession has been made to complainant.

16. Respondent in its reply has taken defence that complainant defaulted in making payments. Respondent has alleged that it had sent numerous

reminder letters to complainant to pay the amount. In this regard, as observed by the Authority in the above para deemed date of possession comes out to 17.05.2022 meaning thereby complainant was obligated to pay till 17.05.2022. Whereas possession has not been offered to complainant till date. Complainant had paid substantial amount of Rs. 25,03,459/- till 13.12.2019 against total sale consideration of Rs. 29,27,140/- which is still stand against respondent. Subsequent to the deemed dated of possession complainant was not obligated to make further payment. It is very natural that an allottee who had paid more than 85% of the total sale price would be hesitant when the timeline for handing over possession are not met by respondent. In case of delay on part of respondent promoter, complainant could not here been expected to stuck more money.

17. In view of aforesaid observations it is established that respondent failed to fulfill its obligation i.e. to handover possession within stipulated time 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 along with interest in favor 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;*

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. 18.11.2025 is 8.85 %. Accordingly, the prescribed rate of interest will be MCLR+ 2% i.e. 10.85%. Complainant in its complainant submitted that she had paid Rs. 25,03,459/- and seeking refund for the same.

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. 25,03,459/- 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 10.85% (8.85% + 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 10.85% till the date of this order and total amount works out to Rs. 17,85,676/- as per detail given in the table below:

Sr.No.	Principal Amount in (Rs.)	Date of payment	Interest Accrued till 18.11.2025(Rs.)
1.	350000	23.04.2019	249907
2.	200000	04.02.2019	147441
3.	150000	27.04.2019	106925
4.	350000	30.05.2019	246057

5.	200000	30.10.2019	131508
6.	200000	13.12.2019	128892
7.	803459	08.04.2019	577268
8.	250000	08.08.2018	197678
	Total Principle amount= Rs. 25,03,459/-		Interest= Rs. 17,85,676/-
	Total amount to be refunded by respondent to complainant = Rs.42,89,135/-		

22. Respondent in its reply stated that complainant itself want to withdraw from the project therefore, respondent is entitled to forfeit the booking amount i.e. 10% of the total sale price. In this regard Authority observed that respondent was entitled to forfeit the amount if complainant defaulted in making payments. As discussed above complainant did not default in making payments and paid Rs. 25,03,459/- against total sale price of Rs.29,27,140/-. Further, deemed date for handing over possession lapsed on 17.05.2022. Meaning thereby respondent itself is in violation of Section 11 (4)(a) since 17.05.2022, and it is only on violation of Section 11(4)(a) did the complainant exercised her right to seek refund under section 18 (1) of RERA Act, 2016. Therefore, respondent is not entitled to forfeit booking amount.

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.42,89,135/- to the complainant. It is clarified interest shall be paid up till the time period as provided u/s 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.

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

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Dr. GEETA RATHEE SINGH
[MEMBER]