# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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| **Complaint no.:** | **2730 of 2022** |
| **Date of filing:** | **18.10.2022** |
| **Date of first hearing:** | **13.12.2022** |
| **Date of Decision:** | **14.10.2025** |

**Arjun Kumar and Sumit Kumar**
H.NO. 594, Ward no.-34, Circular Road
Vijay Nagar, Rohtak ....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**

**Date of decision: 14.10.2025**

**Present:** Adv. Ajit Sihag , Ld. counsel for Complainant
None for Respondent

## ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint was filed on 18.10.2022 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-14/FIFTH/504 |
| 4. | Unit area | 930 sq. ft. |
| 6. | Date of agreement for sale | 08.04.2014 |
| 7. | Deemed date of possession | 08.04.2016 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"* |
| 8. | Basic sale Price | Rs.21,15,750 /- |
| 9. | Amount paid by complainant | Rs. 23,39,153/-( as per receipts attach) |
| 10. | Offer of possession | Not made |

## B. FACTS OF THE CASE IN COMPLAINT

3. That complainants had booked a flat in the year 2012 in respondent's project namely 'Omaxe Shubhangan' located at Sector-4A, Kassar Road, Bahadurgarh. Agreement for sale was executed between complainants i.e. Arjun Kumar, Sumit Kumar and respondent on 08.04.2014 for unit no. VHBH/Tower-14/FIFTH/504. Complainants had paid Rs. 23,29,030.12/- against total sale price of Rs. 23,21,750/-.

4. As per agreement for sale possession of unit was to be handed over by 08.04.2016 six months extension period however respondent has not handed over the possession of unit till date. Complainant communicated with the respondent regarding his grievances qua this flat. However, respondent has not settled the grievances of the complainants. Complainants also sent a legal notice dated 12.06.2022 to the respondent however respondent has not filed any reply.

5. Since, construction of flat has not been completed and possession has not been offered till date complainants seeks refund entire amount paid by the complainants along with @ 24% interest.

## C. RELIEF SOUGHT

Complainants in its complaint has sought following reliefs:

i. In the event that the registration has been granted to the respondent-promoter for the project namely "Subhangan" project situated at Sector4-A, village Kassar, Tehsil Bahadurgarh, District Jhajjar Haryana under RERA Act, 2016 read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA.

ii. In exercise of powers under section 35, direct the respondent-promoter to place on record all statutory approvals and sanctions of the project;

iii. In exercise of powers under section 35 OF RERA AND RULE 21 OF HRE(R&D) RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;

iv. To refund the entire amount along with SBI MLCR + interest.

v. To pay the late possession interests @ SBI MLCR + interest as per Haryana RERA Rules.

vi. Rs.3,00,000/- for causing, harassment, mental agony and undue hardship caused to the complainants on account of deficiency in

service and unfair trade practices and with costs and litigation expenses and relief be given as detail mentioned in para no.5 of the complaint.

vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

## D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 30.01.2024 pleading therein:

6. 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 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.

7. 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 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.

8. That possession was subject to force majure conditions and timely payment. Respondent alleged that it had sent numerous reminders to complainants however complainants have not paid installments on time therefore, complainants cannot raise any issue regarding the delay in possession.

## E. ARGUMENT OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

9. During oral arguments learned counsel for the complainants and respondent reiterated arguments as mentioned in their written submissions. During hearing proceeding Ld. counsel for complainants submitted that aggrieved by the fact that possession has not been handed over to complainants even till date, complainants seeks refund of entire amount paid by complainants.

## F. ISSUES FOR ADJUDICATION

10. 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.

### 11. 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 observed 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.

**12. 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 has raised an objection that present 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 issue, 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. 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.

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 judgment 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 judgment 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."*

Further, 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, 2016; e.g. Section 60 of Competition act, Section 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, 2016 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 The Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, there is 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 complainants had booked a flat in the year 2012 in the respondent's project. Agreement for sale was executed between complainants and respondent on 08.04.2014 for unit no. VHBH/Tower-14/FIFTH/504 in the respondent's project namely "Omaxe Shubhangan", situated at Sector -4A, Kessar, Bahadurgarh.

14. On perusal of clause 40(a) of agreement for sale it is observed that the respondent had 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 08.04.2016 however till date no offer of possession

has been made to complainant.

15. Respondent in its reply has taken plea that offer of possession was subject to force majeure conditions and timely payment by complainant. Authority observes that respondent did not submit any document which can shows that whether any force majeure conditions occurred up till the due date of offer of possession or not. Therefore, respondent was obligated to hand over possession of the unit by 08.04.2016.

16. Respondent has averred that it had sent numerous reminder letters to complainants to pay the amount however, complainants defaulted in making timely payments. In this regard Authority observes that though the respondent has attached reminder letters dated 20.10.2014, 30.10.2014, 17.11.2014, 02.04.2016 21.04.2016 and 17.01.2017, however no proof of delivery of such letters have been attached therewith. Complainant has not admitted receiving these reminder letters. Hence, in absence of proof of delivery of these reminder letters dated 20.10.2014, 30.10.2014, 17.11.2014, 02.04.2016, 21.04.2016 and 17.01.2017 it cannot be proved that same were delivered to complainant. Since, complainant did not receive the reminder letters, there did not arise a question of delay in payments. Moreover, it is a matter of record that complainant had paid an amount of Rs. 23,39,153.38/-against the basic sale price of Rs. 21,15,750/- by 2019 i.e. more than the basic sale price.

17. Admittedly, respondent has not received occupation certificate. As

mentioned in proceeding para no. 10 possession should have been delivered by 08.04.2016 however, even as on date respondent has not made valid offer of possession to the complainants. 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 to seek refund by an allottee has already been 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 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 14.10.2025 is 8.85 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85 %. Complainants in its complainant submitted that he had paid Rs. 23,29,030.12/- and seeking refund for the same. However, perusal of receipts submitted by complainant in the Authority on 16.06.2025 reveals that complainant had paid Rs. 23,39,153/- .Therefore, calculation is made as per amount Rs. 23,39,153/-

21. Authority directs respondent to refund to the complainant the paid amount of Rs. 23,39,153/- 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. 47,98,633/-as per detail given in the table below:

| Sr.No. | Principal Amount in (Rs.) | Date of payment | Interest Accrued till 14.10.2025(Rs.) |
|---|---|---|---|
| 1. | 27500 | 2014-01-31 | 34947 |
| 2. | 250000 | 2012-06-05 | 362658 |
| 3. | 295290 | 2013-06-08 | 396054 |
| 4. | 230566 | 2014-11-22 | 272782 |
| 5. | 7126 | 2014-11-22 | 8431 |
| 6. | 267430 | 2016-04-16 | 275773 |
| 7. | 269690 | 2017-01-18 | 255897 |
| 8. | 269687 | 2017-05-12 | 246755 |
| 9. | 499196 | 2017-09-15 | 438051 |
| 10. | 93213 | 2018-06-12 | 74314 |
| 11. | 118482 | 2019-02-11 | 85866 |
| 12. | 10973 | 2019-02-11 | 7952 |
| | Total Principle amount= Rs. 2339153 | | Interest= Rs. 2459480 |
| | Total amount to be refunded by respondent to complainant = Rs.47,98,633 /- | | |

22. Complainant is also seeking compensation of Rs. 3,00,000 /- for mental harassment, agony, and 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 and compensation.

23. As for relief i, ii and iii of relief clause c, same are not a part for pleadings. Therefore, these reliefs are not allowed.

## I. DIRECTIONS OF THE AUTHORITY

24. 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.47,98,633 /- 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.

25. **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]**