HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**832 of 2025**
Date of filing.:	**18.06.2025**
First date of hearing.:	**05.08.2025**
Date of decision.:	**05.05.2026**

Nitin Kukreja S/o Sh. Hansraj Kukreja ....COMPLAINANT

R/o: Flat no. 602, Harsingar, Shipra

Krishna Shrishti, Plot no. 15, Dr. Sushila Niayar Marg,

Ahins Khand 1, Indirapuram Ghaziabad, UP

VERSUS

M/s Omaxe Ltd ....RESPONDENT

Regd. office.-19B, First Floor

Omaxe Celebration Mall, Sohna Road

Gurugram, Haryana122001

Also at: 7, Local Shopping Centre,

Kalkaji, New Delhi- 110019.

Present: Adv Arjun Kundra, Learned Counsel for complainant
None for the Respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint has been 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. Unit and Project Related Details:

2. The particulars of the project, details of sale consideration, amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	"Omaxe Shubhangan", Sector 4-A, Kassar Road, Bahadurgarh
2.	Nature of the project.	Group housing project
3.	**DTCP License no.**	**109 of 2008 dated 27.05.2008**
	Licensed area	12.54 Acre

Rathee

4.	**RERA Registered/not registered**	Registration vide registration no. 202 of 2017 dated 31.12.2021
5.	**Date of allotment**	13.08.2015
6.	**Details of unit.**	203, 2nd Florr RHBH/Tower-2 admeasuring 391 sq. fts
7.	**Date of Builder buyer agreement**	17.07.2019 (signed by complainant but unsigned by respondent)
8.	**Due date of possession**	13.08.2019
9.	**Basic sale consideration**	₹ 15,28,405/-
10.	**Amount paid by complainants**	₹ 15,51,000/-(as per complaint file)
11.	**Offer of possession.**	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. In this case a unit had been booked in the project of the respondent namely Shubhangan, situated at Bahadurgarh by one original allottee namely Smt. Promila in the year 2012. Thereafter, vide application dated 28.02.2014 for assignment of allotment the present complainant stepped into the shoes of the original allottee. Vide provisional allotment letter dated 13.08.2015 complainant was allotted unit bearing no. 203, 2nd Floor, Tower-2 admeasuring 635 sq. fts. super area in the said project for a total sale consideration of ₹ 15,28,405/-.

4. That after issuing the provisional allotment letter the complainant pursued the respondent to execute a builder buyer agreement. However, the respondent evaded from executing the same and yet kept on raising demands from the complainant. Even after a lapse of three years from the date of issuing of allotment letter no builder buyer agreement was executed and possession of the unit was also not delivered.

5. That in the year 2019, the complainant requested the respondent to deliver the possession of the unit in question or refund the entire paid amount. The respondent then sent an agreement to sell dated 17.07.2019, after a lapse of seven years from booking. The complainant being left with no option, put his signatures on the dotted lines and sent the agreement to the respondent company. However, the respondent company has not countersigned the said agreement nor executed it till date. A copy of agreement for sale dated 17.07.2019 is placed as Annexure C-4. Even the said agreement is not in prescribed format as there is no dates for the manner and payment of instalments are mentioned nor the promised date of possession is specified.

6. For the past 13 years the respondent company has neither issued a legal offer of possession of the unit in question nor there is any sign of completion of the project in the near future.

7. That the complainant has paid a huge amount of ₹ 15,51,000/- to the respondent company, however, the respondent is not in a position to deliver possession of the booked unit to the complainant.

8. As held by Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. that the reasonable time to be assumed for delivery of possession is 3 years in cases where there is no fixed deemed date of possession. In the present case, the application for booking and payment was made by the complainant on 09.05.2012. Thus, it was required of the respondent company to have completed the development of the project latest by 09.05.2015.

9. That the possession of the unit has been due since 09.05.2015. That the complainant after a lapse of more than 10 years from the date of allotment had received a letter titled as "option for offer of possession " dated 17.01.2025 & 08.05.2025 from the respondent company. That the said letters did not mention or provide copy of valid occupation certificate and completion certificate. The project is incomplete till date. That the alleged statement of account issued along with the letter dated 17.01.2025 & 08.05.2025 is non est in the eyes of law.

10. That the possession of the unit in question is due since 09.05.2015. The respondent has failed to legally deliver the possession of the unit in question within the stipulated time frame. It is submitted that on account

of deficiency in services the complainant has become entitled to the refund of his money along with prescribed rate of interest, as per the act. Hence, the present complaint.

C. RELIEF SOUGHT

11. The complainants in present complaint seeks following relief:

i. Direct the respondent to refund the sum of ₹ 15,51,000/- to the complainant along with prescribed rate of interest from the date of payment till actual realization.

ii. May pass any other order as this Hon'ble Authority may deem fit.

12. During the course of arguments, learned counsel for the complainants reiterated the submissions as made in the complaint file.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 28.07.2025 pleading therein:

13. That the complainant in the captioned complaints is seeking refund of ₹.15,51,000/- allegedly paid towards allotment of residential unit no.: "NHBH/TOWER-2/SECOND/203" in the residential project "SHUBHANGAN (3-4 BHK)" situated in Bahadurgarh.

14. That the unit in question was initially booked by Smt Promila on 09.05.2012. The complainant was duly allotted the unit in question vide provisional allotment letter dated 13.08.2015. That the complainant had entered into the agreement for sale in 2015 only with the original allottee and cannot claim any benefit from any payments made by the earlier buyer.

15. That at the time of purchase of the unit in the year 2015, the complainant was well aware about the status of the construction and development works.

16. That the complainant had duly executed an agreement for sale in respect of the unit in question and submitted with the company on 30.08.2019. A true copy of agreement for sale duly signed and executed by the complainant is annexed as Annexure R-3. That the signing of the agreement was delayed by the complainant. As part of the efforts, the respondent had issued a letter dated 28.06.2019 calling upon the complainant to execute and register the agreement. A copy said letter is annexed as Annexure R-5.

17. The complainant has not been issued an offer of possession of the unit in question through the offer of possession letter dated 17.01.2025. Despite issuing an offer of possession, it is the complainant who is not coming forward to accept the possession of the unit. As per the statement of accounts, a total sum of ₹ 14,67,192/- has been received from the complainant against the consideration value of the unit. However, as on date, an outstanding amount of ₹ 2,17,582/- remains due and payable by the complainant towards final possession and associated charges.

18. It is submitted that the delay, if any, in completion and possession of the said unit occurred due to circumstances beyond the control of the respondent particularly the force majeure conditions arising out of the Covid-19 pandemic. The Haryana Rera authorities have explicitly recognized COVID-19 as force majeure event, granting extensions for registered projects to account for the unprecedented disruptions caused by the pandemic. Notably, HRERA Circular No. HRERA/PKL/ED/2020/3167-73 dated 25.05.2020 provided an automatic extension of six months to all registered projects to mitigate the impact of nation wide lockdown. Subsequently, during the second wave of COVID-19, HRERA issued a resolution dated 02.08.2021, granting a special extension of three months for the period from 01.01.2021 to 30.06.2021, treating it as a force majeure event.

19. That as per clause 7.1 of the agreement the hand over of possession of the unit to the allottee was to be in accordance with the terms and conditions subject to force majeure circumstances. That a period of three years from the date of signing of the agreement expired on 30.08.2022 subject to force majeure.

20. The complainant was also served with a reminder letter dated 08.05.2025 reiterating the offer of possession of the unit no. 203, 2nd Floor, Tower 2 and requesting the complainant to come forward to take possession and clear outstanding dues.

21. The complainant has deliberately delayed making payments as per the agreed payment plan. Despite repeated reminders, the complainant failed to fulfill their financial obligations.

22. During the course of arguments, learned counsel for the respondent was enquired with regard to the status of receipt of occupation certificate. In response, learned counsel for the respondent submitted that he has no information with regard to receipt of the same.

E. ISSUES FOR ADJUDICATION

23. Whether the complainant is entitled to receive refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

F. OBSERVATIONS OF THE AUTHORITY

24. After hearing the submissions of both parties, Authority observes that complainant in present complaint had stepped into the shoes of an original allottee for a unit booked in the project of the respondent in the year 2012. Vide allotment letter dated 13.08.2015 complainant was allotted unit bearing no. 203, 2nd Floor, Tower-2 admeasuring 635 sq. fts. super area in the said project for a total sale consideration of ₹ 15,28,405/-. That the complainant has paid a total amount of ₹ 15,51,000/- against the said unit. It has been alleged by the complainant that the respondent deliberately delayed the execution of builder buyer agreement and even so, the agreement dated 17.07.2019 has not been signed/executed by the

respondent till date. It is further alleged that the respondent is not in a position to deliver a valid possession of the unit in question and thus, the complainant is seeking refund of the paid amount along with interest.

25. As per facts, the unit in question had been booked by the original allottee on 09.05.2012. Thereafter the present complainant stepped into the shoes of the original allottee by application for assignment dated 28.02.2014 i.e before the due date of handing over of possession. The allotment letter qua the unit in question was issued in favour of the complainant on 13.08.2015. The Section 2(d) of the RERA Act does not differentiate between the original allottee and the subsequent allottee once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter. The subsequent allottee, the complainant in this case, enters into the shoes of the original allottee for all intents and purposes and shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee.

26. That till the year 2019 no builder buyer agreement was executed between the parties. It is the contention of the respondent that the complainant failed to come forward to execute an agreement qua the unit in question. The respondent has placed reliance on a letter dated 28.06.2019 asking the complainant to execute and register agreement for sale. In this regard it is observed that no communication has been placed on record by the

respondent for the period 13.08.2015 till the letter dated 28.06.2019 in respect of execution of an agreement for sale. Further the letter dated 28.06.2019 has not been admitted to by the complainant and as proof of delivery the respondent company has placed on a dispatch slip of private courier company without any proof of service/delivery report. Hence, this contention of the respondent cannot be accepted. It is considerably further noted that the agreement for sale dated 17.07.2019 has not been signed/executed by the respondent company. It only bears the signature of the complainant. In light of this fact, it can rightly be ascertained that a legally valid agreement for sale has not been executed between the parties.

In the absence of a builder buyer agreement/agreement for sale reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. Now, taking a period of three years from the date of allotment i.e 13.08.2015, the possession of the unit in question should have been delivered by 13.08.2018. Admittedly, the respondent failed to deliver possession of the unit in question within stipulated time.

27. Admittedly delivery of possession of the unit in question has been delayed beyond the stipulated time. Respondent has attributed this delay in construction to disruption in construction activity due to COVID-19 outbreak and delay in payment of instalments by the complainants/allottee. In this regard it is observed that the COVID-19 outbreak hit construction activities post 22.03.2020, whereas the delivery of possession of the unit in question was to be handed over by 13.05.2018. Therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, 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 (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020** 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;2018. 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 August, 2022 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"

Respondent cannot be allowed to take the plea of force majeure conditions towards delay caused in construction of the project/delivery of possession as the same did not affect the construction activities at the site of the project during the proposed possession timeline.

28. The respondent in its submissions has submitted that an offer of possession has been issued to the complainant on 17.01.2025, however, it is the complainant who has failed to come forward to accept the same. A bare perusal of the said letter would reveal that the respondent company in said letter is itself admitting that the development of the project is "on the verge of completion and we are in the process of obtaining necessary approvals". Meaning thereby that even at the time of said offer of possession there were still pending works at the site of the project and further that the respondent company is silent with regard to receipt of occupation certificate. During the course of hearing, learned counsel for the respondent was enquired with regard to status of receipt of occupation certificate, however, the learned counsel was unable to provide any definite information.

29. Fact of the matter is that even after a lapse of more than 6 years from the due date of delivery of possession i.e 13.08.2015, the construction of the

project is not complete and the respondent is not in a position to handover legal possession in foreseeable future. Even in its reply/oral submissions the respondent has failed to apprise the Authority the status of receipt of occupation certificate. In such circumstances, the complainant cannot be forced to wait further for delivery of possession of the booked unit for an indefinite amount of time for a unit for which allotment has been made way back in 2015. Complainant in this case does not wish to continue with the project on account of inordinate delay caused in delivery of possession and is hence seeking refund of paid amount along with interest as per RERD Act 2016.

30. 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(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, the allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. 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."

31. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, the Authority finds it to be a case fit for allowing refund in favour of the complainant. So, the Authority hereby concludes that the complainant is entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. 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: *"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 (NCLR) 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"

32. Hence, Authority directs respondent to refund to the complainant the paid amount 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 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount.

The respondent in its written submission has contended that the complainant in the present case is a subsequent allottee who stepped into the shoes of the original allottee on 28.02.2014 and hence, the complainant

is not liable to receive benefit from any payment made prior to said date. In this regard it is observed that the rights qua the unit in question originated from the rights adorned by original allottee Mrs. Promila, which were later transferred to the complainant when he stepped into the shoes of the original allottee on 28.02.2014. Till then original allottee had made payment of an amount of ₹ 2,00,000/- to the respondent as booking amount on 09.05.2012 in respect of the unit in question. Thereafter the present complainant stepped into the shoes of the original allottee and has been making payments of subsequent demands. A bare perusal of application dated 28.02.2014 reveals that the original allottee therein had endorsed "100% rights and interest, pertaining to the unit in question, including payments made in that regard, in favour of the subsequent allottee", meaning thereby that when the complainant entered into the shoes of the original allottee the respondent company had received and utilised the amount of ₹ 2,00,000/- and the complainant herein would have made over and above payment to the original allottee for endorsement of the unit along with said amount. That in the aspect of the unit in question the present respondent was in receipt of the money since 2012. In case, the complainant would have opted for possession then the respondent would have attributed the liabilities of the original allottee over the subsequent allottee post stepping in. The present complainant acquired the liabilities/benefits from said payment in equal regards. Thus, the contention

of the respondent that rights of the complainant be acknowledged from the date of endorsement is rejected.

33. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 05.05.2026) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 05.05.2026 (in ₹)
1.	2,00,000/-	09.05.2012	3,02,000/-
2.	1,42,875/-	24.01.2014	1,89,605/-
3.	1,64,720/-	14.06.2016	1,76,094/-
4.	1,64,720/-	10.08.2016	1,73,316/-
5.	1,64,721	07.12.2016	1,67,517/-
6.	1,64,720/-	07.04.2017	1,61,619/-
7.	1,64,720/-	13.06.2017	1,58,353/-
8.	82,360/-	30.06.2017	78,672/-
9.	82,361/-	12.04.2018	71,794/-
10.	1,35,471/-	17.12.2018	1,08,108/-
Total:	**14,66,668/-**		**15,87,568/-**
Total payable to complainant: 30,54,236/-			

34. Upon perusal of record it is observed that the complainants in the complaint file have claimed to have paid a total amount of ₹ 15,51,000/-, however, as per the receipt annexed the total paid amount works out to ₹ 14,66,668/-. For the differential amount of ₹ 84,332/- there is no receipt annexed, hence the said amount shall not be considered. Thus the receipts placed on record by the complainant qua the unit in question is for an amount of ₹ 14,66,668/-. Accordingly, the total amount paid by the complainant in the captioned complaint works out to ₹ 14,66,668/-.

G. DECISION OF THE AUTHORITY

35. 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 amounts along with interest of @ 10.80% ₹ 30,54,236/- to the complainant as specified in para 33 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of 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.

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

.....

DR. GEETA RATHEE SINGH

[MEMBER]