HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1364 of 2025**
Date of filing.:	**03.09.2025**
First date of hearing.:	**11.11.2025**
Date of decision.:	**25.08.2026**

Commander Amit Dalal s/o Shri J B Dalal ....COMPLAINANT

R/o: 2 Delhi Naval Unit NCC,

Sailing Club Road, Canal Colony,

Jamia Nagar Road, New Delhi- 110025

VERSUS

....RESPONDENTS

1. M/s Omaxe Ltd

   Regd. office.: 7, Local Shopping Centre,

   Kalkaji, New Delhi- 110019.

2. Omaxe Shubhangan Bahadurgarh

   Through its Authorized Signatory

   Regd Office:Sector-4A, Kassar Road,

   Bahadurgarh, District-Jhajjar-124507

Complaint no.:	**1369 of 2025**
Date of filing.:	**03.09.2025**
First date of hearing.:	**11.11.2025**
Date of decision.:	**25.08.2026**

Cdr Bikas Sigh Nayal(retd) s/o Col. Narayana Singh Nayal

....COMPLAINANT

R/o: Flat no. 604, Tower A-2,

Sandeep Vihar, Kannamangala

Whitefield Hoskote Road,

Bengaluru-560067

VERSUS

1. M/s Omaxe Ltd ....RESPONDENTS

Regd. office.: 7, Local Shopping Centre,

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Regd Office:Sector-4A, Kassar Road,

Bahadurgarh, District-Jhajjar-124507

Present: Col. Shamsher Singh, Learned Counsel for the Complainant through VC. (in both complaints)
Adv. Pranab Bansal, Learned Counsel for the Respondents through VC.

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ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Captioned complaints have been filed by complainants, respectively, 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.

2. Both the captioned complaints are being taken up together as they pertain to the same project of the respondents and facts and grievances involved are similar and being decided taking Complaint No. 1364 of 2025 as the lead case.

A. Unit and Project Related Details:

3. 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

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3.	**DTCP License no.**	**109 of 2008 dated 27.05.2008**
	Licensed area	12.54 Acre
4.	**RERA Registered/not registered**	Registration vide registration no. 202 of 2017 dated 31.12.2021
5.	**Date of allotment**	01.11.2013
6.	**Details of unit.**	Flat bearing No RHBH/TOWER-18/FOURTH/402
7.	**Date of Builder buyer agreement**	17.02.2014
8.	**Possession Clause**	Clause 40(a) "The Company shall complete the development /construction work of the Unit/Project within 18 (Eighteen) months from the date of signing of this Agreement by the Buyer or within extended period of 6 (six) month."
8.	**Due date of possession**	17.02.2016
9.	**Total sale consideration**	₹31,17,029/-
10.	**Amount paid by complainants**	₹31,78,396/-
11.	**Offer of possession.**	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. That the original allottee, Mr. Ved Prakash Veer, had booked a dwelling unit No. RHBH/TOWER-18/FOURTH/420 in a housing project namely "Revanta Homes Bahadurgarh" after paying a booking amount of ₹ 3,00,000/- on 28.08.2012.

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Copy of payment receipt is annexed as Annexure C-1 & 2. That the complainant purchased the said unit from the original allottee after making due payment. The complainant and original allottee submitted the duly signed Request Form dated 22.08.2013 for assignment of rights in respect of the unit in question. Copy of the request form is annexed as Annexure C-3.

5. The respondents changed the name of the project from Revanta Homes Bahadurgarh to "Shubhangan" and issued a provisional allotment letter dated 01.11.2013 in respect of the unit in question, copy annexed as Annexure C-4.
6. That a builder buyer agreement dated 17.02.2014 was executed between the complainant and the respondents. Copy of the agreement is annexed as Annexure C-7. That as per the clause 40 (a) of the agreement, possession of the unit was to be delivered within a period of 18 months from the date of signing of the agreement or within an extended period of 6 months. That, accordingly, the possession of the unit was to be delivered by 17.02.2016.
7. That the total sale consideration of the unit was fixed as ₹ 31,17,029/- . In order to fulfill the contractual obligations of making timely payment of instalments as per schedule, the complainant applied for a loan application for availing loan from Naval Group Insurance Fund (NGIF). That a loan amount of ₹ 27,00,000/- was sanctioned vide letter dated 03.07.2014.
8. That Lieutenant Rakesh Kumar, Staff Officer, Indian Navy MARCOS (East) wrote a Letter dated September 15 addressed to Mr. Rahul Rohilla, OMAXE Ltd. by requesting him for kind consideration of the delay in payment of due

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installments by Mr. Amit Dalal due to exigencies of service/official commitments is annexed as **Annexure C-9**.

9. The respondents issued a letter dated 09.06.2025 by proposing to give an option for offer of possession to carry out fitting and furnishing work in the allotted unit while the said project was on the verge of completion and the respondents were in the process of obtaining all necessary approval for the same. Copy of the said Option Letter dated 09.06.2025 is annexed as **Annexure C-11**. Since the respondents had tried to give only a paper possession of the unit in question without obtaining the necessary legal certifications from the competent authority, the same was not tenable/ feasible under the prevailing law on the subject matter. Hence, the complainant refused to take over the possession of incomplete dwelling unit in question.

10. The respondents issued another Statement of Account to the complainant on 18.06.2025. Copy of the said Statement dated 18.06.2025 is annexed as **Annexure C-12**.

11. There is inordinate delay in completion of the project for more than ten years. Complainant made full and final payment of ₹ 31,78,396/- by 24.01.2018.The respondents have adopted a very casual approach for completing the project resulting in inordinate delay in completing the project even after lapse of more than 13 years from the date of booking of the flat in 2012. Complainant wrote letters to respondents to speed up the construction work and hand over the possession of the dwelling unit fully completed in all respects but to no avail.

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The complainant was misled and false assurances were given by the officials manning the reception counters of the respondents that possession will be offered soon. The assurances given by the officials/representatives of the respondents proved untenable over time as possession of dwelling Unit in question is still awaited

12. As per clause 40(a) of agreement, the respondents were under an obligation to deliver possession within 18 months. However, respondents till date have not offered legal possession of the unit to the complainant as the project is not yet complete and it has not received occupation certificate from competent authority. Complainant has paid a huge amount of **Rs 31,78,396/-** to the respondents in respect of the unit in question. Though, respondents in its offer of possession letter (Annexure C-11) has stated that construction is going on at full swing, it has failed to give a dedicated date in near future for completion of the project. In such circumstances, complainant has been forced to wait endlessly for possession against his wishes. Since respondents are not in a position to offer a valid offer of possession in foreseeable future, complainant who has already waited for more than ten years does not wish to wait for a further uncertain amount of time for a valid possession. Complainant is as per Section 18(1) of RERA Act, 2016 entitled to exercise his rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.

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13. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. Versus State of Uttar Pradesh and others" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them.

14. That as per Para 35 of the agreement (Annexure C-7), respondents have been charging penal interest @18% per annum for one month delay from the due date of payment and 24% per annum, thereafter on all outstanding dues from their respective due dates. Keeping in view of the principle of equity, natural justice and fair play, the same percentage of penal interest at the rate of 24% per annum is liable to be paid by the respondents for the refund of principal amount from date of each deposit onwards till the date of realization of amount.

15. In view of the facts and circumstances enumerated above, the complainant is entitled to refund of the principal amount along with interest as prescribed under provisions of Section 18 (1) of The Real Estate (Regulations and Development) ACT, 2016 read with Rule 15 of HRERA Rules 2017 for inordinate delay in handing over the possession of the dwelling unit after taking requisite money from the complainant. As per Section 18 of the RERA Act, 2016, interest shall be awarded as such rate as may be prescribed.

C. RELIEF SOUGHT

16. The complainant in present complaint seeks following relief:

i. Direct the respondents to refund the entire principal amount of ₹31,78,396/- received by the respondents with 24% penal rate of interest from date of each deposit till date of actual realization.

ii. Direct the respondents to pay compensation for causing grave injustice, mental agony & trauma, physical harassment and financial loss, transportation and lodging expenses, other incidental expenses, on account of deficiency in rendering services, adoption of unfair and restrictive trade practices amounting to Rs 10,00,000 /- (Rupees Ten Lakh Only) for fraudulently reaping the fruits of the hard-earned money of the complainant.

iii. Direct the respondents to pay a sum of ₹1,00,000/- for forcing the complainant to enter into litigation for redressal of his grievances towards cost of the litigation expenses.

iv. Issue any other order or direction which this Hon'ble Authority may deem fit and proper in favour of the complainant in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 10.12.2025 pleading therein:

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17. That the instant complaint in its present form is not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 201 6 (hereinafter referred to as the 'RERA Act'). The answering respondents has not violated or contravened any provision of the 2O16 Act, and the allegations raised do not fall within the scope or ambit of any provision thereof.

18. That it is pertinent to mention here that the alleged dispute is liable to be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act,2015, in terms of Clause 62 of the Agreement. The filing of present reply is without prejudice to the said fact, and it should not be construed that the respondents have agreed to submit to jurisdiction of this Hon'ble Authority or that it has waived its plea for referral of alleged dispute to arbitration.

19. That the complainant in the captioned complaint is seeking refund of ₹31,78,396/-/- allegedly paid towards allotment of residential unit no.: "NHBH/TOWER-18/FOURTHI 402" in the residential project "SHUBHANGAN (3-4 BHK)" situated in sector 4-A, Kassar Road, Bahadurgarh.

20. The unit in question was initially booked by 'Mr. Prakash Veer'. It is further denied that the complainant had booked the flat in 2012 as he purchased the same from the original allottee after assignment and therefore, the complainant's claim of having purchased the unit in 2012 or that the respondents

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have ever made any kind of assurances to the complainant is false and misleading.

21. It is pertinent to mention here that not even once prior to filing the present complaint, did the complainant approached the respondents and asked for refund of their amount on any ground whatsoever and the said fact can be ascertained from the complaint itself as the complainant has failed to annex even a single correspondence which proves the said fact rather, there is only letter by his employer Lt. Rakesh Kumar (Annexure C-9) which in turn proves delays in payment of Due instalment by the complainant.

22. Perusal of clause 40 (a) of the Apartment Buyer's Agreement dated 17.02.2014 would reveal that it had been categorically agreed between the parties that subject to force majeure conditions and subject to timely payment by the allotee or subject to any other reasons beyond the control of respondent company, the respondent company proposed to complete the development / construction of the unit in question within 18 months from the date of signing of the allotment letter and within such further extended grace period of 6 months, meaning thereby in total 24 months. It is further agreed that the afore-said period of development was to be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and days of cessation of work at site in compliance of order of any judicial / concerned state legislative body.

23. Perusal of the above clause reveals that it had been agreed and accepted between the parties that in case of any default/delay in payment as per the

schedule of payments as provided in the Allotment Letter, the date of handing over of possession shall be extended accordingly. It is a matter of record that in the present case, the complainant has not fulfilled its obligation and has not paid the installments on time that had fallen due, which can be proved by their own documents. Accordingly, no relief for alleged delay in offering the possession can be said to be maintainable, especially so when the complainant has failed to comply with the corresponding responsibility under the said clause of making timely payments. Copy of Apartment Buyer's Agreement dated 17.02.2014 and copies of various demand notices and reminders issued by the respondent company to the complainant for payment of due instalments are annexed as Annexure R/2 & colly.

24. Even otherwise, in the event of failure of the respondent-company to handover possession by due time, clause 40 (g) of the allotment letter will be enforced and in view thereof, the respondent-company is liable to make compensation of Rs. 5 per square per feet, per month, for the entire delayed period. It is respectfully submitted that the parties are strictly governed by the terms of the Agreement, and the respondent-company remains ready and willing to pay any compensation, if at all found payable, strictly in accordance with the contractual provisions relating to delay in possession.

25. That firstly, the complainant after stepping into the shoes of original allottees, had opted for construction linked plan, however, as and when the demands were raised in accordance with stage of construction the complainant

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defaulted in making the payments, which were finally made after repeated reminders. Not only the complainant but even various other allottees defaulted in making timely payments, which in tum resulted in delay in construction. Secondly, pandemic of Covid-19 hit the entire nation and the Government of India realizing difficulties being faced by the real estate sector, due to the reverse migration of labourers to their native places and break in supply chain of construction material, issued an advisory dated 13.05.2020 to all the State Real Estate Regulatory Authorities to extend timelines for all statutory compliances by 6 months, which was further extendable by 3 months, by invoking the provision of 'Force Majeure' under the RERA Act. However, even after the afore-mentioned 9 months, it took time to the real estate sector to recover from the aftereffects ofCovid-19, which further delayed the project in question.

26. That the complainant applied for and obtained a housing loan from the Naval Group Insurance Fund (NGIF) on 03.07.2014, the sanction of which is a matter of record. Lieutenant Rakesh Kumar, Staff Officer, Indian Navy MARCOS (East), addressed a request letter dated September 2015 to the respondents seeking indulgence for the delay in payment of instalments by the complainant due to service-related commitments. The said communication is in fact a clear admission of the complainant's default in timely payment and completely disproves the allegation that payments were made as per schedule.

27. That without prejudice to the above submissions, even otherwise, the Hon'ble Authority does not have the territorial jurisdiction to entertain and try

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the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh & Delhi. That the respondent relies upon the Hon'ble Supreme Court in Landmark Judgment of **ABC Laminart Pvt. Ltd. V AP Agencies MANU/SC/0001/1989 [AtR 1989 SC 12391** and in **Swastik Gases P Ltd V/S Indian Oil Corporation Ltd MANU/SC/065412013 l(2013) 9 SCC 321.** The case in hand is squarely covered under the aforesaid judgments.

28. That it is also apposite to mention here that total amount paid by the complainants towards payment for unit in question is ₹29,84,499.231- + ₹.1,33,666.59/- towards ST/GST i.e. ₹31,18,165.821- and not ₹31,78,396/- as has been alleged in the complaint.

29. That the respondent in order to complete the project has spent hundreds of crores of rupees in mobilizing resources, generating and creating infrastructure, manpower, building material, installation of electrical equipment, sewerage systems, water pipelines and other most of services and amenities with the objective of ensuring a superior and comfortable living environment for all allottees. Further, due to the pandemic of Covid-19 the construction activity in the project in question had come to a standstill and it was only after lots of efforts that the things have gotten back to track. Still further, even the Government of India as well as the present Authority realizing the difficulties being faced by the Real Estate Sector due to the pandemic had invoked a force majeure clause, thereby granting some relief to the Real Estate Industry.

30. It is further submitted that the complainant himself is estopped by his own act and conduct, particularly when the possession of the unit has already been offered on 09.06.2025 and the complainant has refused to take the possession without any lawful cause. Once an offer of possession is issued and the project is substantially complete, the preset complaint becomes not maintainable.

E. REJOINDER FILED BY THE COMPLAINANT

Learned counsel for the complainant filed rejoinder on 11.03.2026 pleading therein:

31. That the respondents have failed to deal specifically with each allegation of fact, as mandated by Order VIII Rules 3, 4, and 5 of the Code of Civil Procedure (CPC). Such a vague, omnibus, or evasive denial amounts to a deemed admission of the facts mentioned in the complaint.
32. That the jurisdiction of the Hon'ble Authority cannot be fettered by the existence of an arbitration clause in Para 62 of 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 Hon'ble 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 complainant puts reliance on catena of judgments of the Hon'ble Supreme

Court, particularly on **National Seeds Corporation Ltd. Vs M. Madhusudhan Reddy and Another** (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 Hon'ble Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

33. The RERA Act, 2016, does not make it mandatory to send a legal notice or engage in pre-litigation communication to file a complaint under Section 31. The right to approach the authority arises immediately upon the promoter's violation of the Act and the cause of action arises from the breach of contract (e.g., non-delivery of possession by the promised date), not from the time the complainant approached the respondent. The respondent miserably failed to deliver possession on time, and hence, they are in clear breach of Section 18(1) of RERA. The burden of proof is on the promoter to show they fulfilled their obligations, not on the complainant (allottee) to keep chasing them. It is reiterated that payment receipts, the builder-buyer agreement , and the RERA registration status constitute proof of the relationship and default by the respondents. The fact of the case is that it is the respondents, not the complainant, who are misleading by taking money and failing to deliver the unit or obtain an Occupation Certificate (OC) till date. It is vehemently asserted that the claim is based on the legally binding agreement and the breach of contractual obligations.

34. The complainant used to interact with Mr. Rahul Rohilla till 2018, on his mob No. 9711800417 (point of contact assigned by respondents for his file), Mr. Chandan (as told by Mr. Rahul Rohilla) seeking update on project completion and updating of online payments (copy of WhatsApp interaction with mob No. 9711800704 and 9718925750, are annexed as Annexure C-13. Payment made on 24.01.2018 was not updated till 13.02.2018. Late up-dation of payments was a frequent issue despite repeated requests (copy of SMS text interaction with Mr. Raza, on mob No. 9711800424 is annexed as Annexure C-14. The Statement of Account emailed (email dated 08.07.25) by company after repeated email requests, itself reflects multiple payments being updated with delay up to approx. 50 days by the company.

35. The complainant had a meeting in person with Mr. Deepak, Mr. Bharat and their senior in office Mr. Raza on 18 Jun 2025 wherein he was compelled to wait for approx. one hour and 30 minutes. Shockingly, even thereafter, no clear picture on the exact date of valid and legal offer of possession, occupancy certificate and penalty to be paid by the company were given (audio recording). The Audio recording of the same can be produced before the Hon'ble Authority during the argument stage if so required and allowed please.

36. There was never an intimation of any late payment by phone or mail. Instead during mid of 2015, during physical visit to respondent's head office in Kalkaji, New Delhi when complainant inquired about receipt of latest

payment not received, Mr. Rahul Rohilla brought out a surprising extra amount to be paid as penalty and told to discuss with Mr. Raza (WhatsApp text interaction on his contact number 9718925750, is already annexed as Annexure C-13). Letter signed by the employer of the complainant, was sent on suggestion by Mr. Rahul Rohilla to consider any delay in payment, if at all, from complainant's side owing to the operational commitment of a Special Forces Officer involved in confidential tasking for National Security (documents indicating confidential nature of duties of the complainant are annexed as Annexure C-16 and justification provided in subsequent paras). The delay in payment was irrelevant wherein the Complainant while deployed on national security missions has dutifully expressed the reasons for it, specifically citing non-intimation of instalment and the exigencies of deployment. Deployment to national security missions is recognized as a valid "exigency" that may prevent a soldier from adhering to strict financial timelines. Moreover, when the complainant's employer with right spirit and dutifully informed the respondents of the alleged delay, it demonstrated good faith wherein the complainant was genuinely incapacitated by exigencies of duty despite the very relevant fact that the respondents had failed to provide notice of the instalment well in advance.

37. The contention of respondents to compute period of delivery of possession due to Sundays, Saturdays and Govt. Holidays cannot sustain. As per Clause 40 (a) of the Agreement dated 17.02.2014 (Annexure C-7), it is clearly stated

that the respondent to complete the development/construction of the Unit/Project within 18 (Eighteen) months from the date of signing of the Agreement with an extended period of six months. It is significant to mention here that when there is no explanation of getting extension of period of delivery of possession beyond the stipulated promised date, the benefit of exclusion of Saturday, Sundays and Bank holidays etc. cannot be given. Moreover, the respondents do not grant holidays/off days to the workmanship/staff/laborers on Saturdays/Sundays/Closed holidays. Hence, the plea of the respondents deserves to be rejected.

38. In view of the real estate project in question having been delayed inordinately, it is an absolute, unconditional, and statutory right of the allottee (complainant) to either seek a full refund of the amount deposited with interest or to continue with the project and take possession along with delay penal interest.

39. The Hon'ble Supreme Court of India has held in catena of judgments that the allottee's right to seek a refund in an inordinately delayed project is "absolute and unconditional" and cannot be diluted by contractual terms of the agreement or minor stages of construction.

40. Case laws cited by the respondents are distinguishable since the material facts of the cited precedent differ from the present case, rendering the precedent inapplicable. The objection that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have

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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/TCP 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 purposes. In the present case, the project in question is situated within the planning area of Bahadurgarh. Therefore, this Hon'ble Authority has full and complete territorial jurisdiction to deal with the present complaint.

41. The credibility, sincerity, and honesty of the complainant purchasing a flat for family stability cannot be permitted to be questioned by respondents when the developer himself has failed to deliver the promised services. When the Complainant entered and executed an agreement dated 17.02.2014 (Annexure C-7) and made timely payments for the allotted dwelling Unit for the purpose of securing his family stability/housing, his intent has to be considered bona fide, especially when the defaulting respondent developer has accepted full and final payments amounting to Rs 31,78,396/- as on 24.01.2018 but failed to adhere to the construction schedule or promised delivery timelines within 18 months (15.08.2015). It is pertinent to bring out here that the defaulting respondents are yet to offer the valid and legal offer of possession with mandatory certifications as mandated by the Hon'ble Apex Court in its judgment in **Dharmendra Sharma Vs Agra Development Authority (2024), Debashis Sinha Vs RNR Enterprise (2023)** and **IREO Grace**

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Realtech Pvt. Ltd. Vs Abhishek Khanna (2021) wherein it was ruled and reiterated that a valid offer of possession is one that is accompanied by an Occupation Certificate. The Hon'ble Supreme Court has ruled that a buyer cannot be forced to wait indefinitely for a home and that the developer cannot enjoy the funds of the complainant while failing to deliver the promised property, making arguments challenging the buyer's sincerity invalid

F. ARGUMENTS ON BEHALF OF LEARNED COUNSELS FOR BOTH THE PARTIES

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

43. Learned counsel for the respondent submitted that his reply may be treated as his arguments. He further submitted that an offer of possession had been issued to the complainant on 09.04.2026 after receipt of occupation certificate. As per office report, a copy of offer of possession has not been placed on record.

Learned counsel for the complainant submitted that, as per his instructions, the complainant declines to take possession of the unit in question and is not interested in retaining the same. Accordingly, the complainant seeks to forgo possession of the said unit and requests that the matter be proceeded with for grant of the relief of refund of the amount paid.

G. ISSUES FOR ADJUDICATION

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

H.FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENTS.

H. I Objection regarding territorial jurisdiction

One of the averments of respondents is that the 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.

H.II 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 averment of the respondents is that dispute ought to be referred under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in

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2015) as per clause 63 of agreement for sale dated 12.04.2014 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.

I. OBSERVATIONS OF THE AUTHORITY

45. After hearing the submissions of both parties, Authority observes that a unit bearing no. RHBH/TOWER-18/FOURTH/420 had been booked by the original allottee, Mr. Ved Prakash Veer, in the project of the respondents namely "Shubhangan" after paying a booking amount of ₹ 3,00,000/- on 28.08.2012.

Thereafter, the complainant purchased the said unit from the original allottee and submitted the request form dated 22.08.2013 for assignment of rights in respect of the unit in question. Thereafter, a provisional allotment letter dated 01.11.2013 was issued to the complainant in respect of the unit in question. A builder buyer agreement was executed between the parties on 17.02.2014. As per clause 40(a) of the said builder buyer agreement, possession of the unit was to be delivered within a period of 24 months from the date of execution. Said period expired on 17.02.2016. The total sale consideration of ₹ 31,17,029/- against which the complainant has made a total payment of ₹ 31,78,396/- till the year 2018. Complainant is aggrieved by the fact that despite a lapse of more than 9 years from the proposed deemed date of possession, respondents are not in a position to deliver legal possession of the booked unit as the construction work is not complete at the project site.

46. Admittedly delivery of possession of the unit in question has been delayed beyond the stipulated time. Respondents have 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 17.02.2016. Therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondents 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 (I) (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*"

Thus, the plea of force majeure on account of the COVID-19 pandemic is also of limited relevance in the facts of the present case, as the contractual date for possession had expired much prior to the onset of the pandemic. The pandemic-related period, therefore, cannot explain or condone the delay that had already accrued before the same.

As regards the contention of the respondents that the complainant had committed certain delays in payment of instalments, the same, even if accepted to the extent established from the record, cannot justify the entire and prolonged delay in completion and delivery of the unit. Any delay in payments, if any, on the part of the complainant, was duly accounted for by the respondent, by way of applicable interest on delayed payments from the complainant. As per the record, the respondent had, by the year 2018, already received from the complainant an amount exceeding the agreed sale consideration, including the interest/charges levied towards delayed payments. Thus, the respondents have failed to establish a sufficient nexus between the alleged delay in payment and the substantial delay in completion of the project extending over several years. The contractual obligation to deliver possession within the stipulated period could not be indefinitely deferred on the basis of such contentions. Therefore, this plea of the respondent is rejected.

47. Fact of the matter is that the unit in question had been allotted to the complainant vide letter of allotment dated 01.11.2013. As per the terms of agreement executed between the parties, the possession of the unit was to be delivered by 17.02.2016. The complainant has already made payment of ₹31,78,396/- towards the unit and that despite having made the payments in the year 2018 itself, possession of the unit has been inordinately delayed. The alleged offer dated 09.06.2025 was made after an inordinate delay of several years and, as pleaded by the complainant, was only an option to undertake fitting and furnishing work while the "development of the said project was on

the verge of completion " and the respondents are "in the process of obtaining necessary approvals for the same". Though, during the course of arguments today, learned counsel for the respondent submitted that a valid offer of possession was issued to the complainant on 09.04.2026 after receipt of the occupation certificate, however, a copy of the said offer and the supporting documents has not been placed on record. Be that as it may, the complainant has categorically submitted that, in view of the inordinate delay in delivery of possession, he is no longer interested in retaining the unit in question or continuing with the project. The complainant has thus exercised his option to withdraw from the project and seek refund of the amount paid, along with interest as admissible under the provisions of the RERA Act, 2016.

48. Section 18(1) of the RERA Act provides that where the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, the allottee, if he intends to withdraw from the project, shall be entitled to receive the amount paid by him in respect of such apartment, plot or building, with interest at such rate as may be prescribed and compensation in the manner provided under the Act. In the facts and circumstances of the present case, particularly having regard to the substantial and inordinate delay in offering possession, the subsequent offer of possession cannot, by itself, deprive the complainant of his legitimate right to seek withdrawal from the project. Accordingly, the relief of refund of the amount

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paid by the complainant, along with interest as permissible under the RERA Act, 2016, is liable to be allowed.

49. Further, Hon'ble Supreme Court in the matter of **"Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others"** in CIVIL APPEAL NO(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."*

50. 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 remedy under Section 18(1) is thus available to an allottee who chooses to withdraw from the project on account of the respondent's failure to deliver possession within the agreed period.

51. In the present case, the complainant has clearly expressed his unwillingness to continue with the project and has sought refund of the amount deposited. Accordingly, the complainant is held entitled to withdraw from the project and receive refund of the amount paid towards the allotted unit, together with interest in terms of Section 18(1) of the RERA Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

52. The contention of the complainant seeking interest at the contractual penal rate of 24% per annum is not accepted. The interest payable under Section 18(1) is to be determined in accordance with the statutory rate prescribed under the applicable Rules and not by applying the penal rate stipulated in the agreement for delayed payments by the allottee.

53. 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:

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(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"*

54. Hence, Authority directs the respondents 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

Rattee

on date works out to 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount.

55. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 25.08.2026) in respective complaints and same is depicted in the table below:

Complaint no. 1364 of 2025

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 25.08.2026 (in ₹)
1.	3,00,000/-	28.08.2012	453689/-
2.	2,29,150/-	14.03.2013	333118/-
3.	3,00,000/-	07.08.2013	423153/-
4.	11,080/-	08.08.2013	15625/-
5.	27,500/-	09.08.2013	38773/-
6.	4,22,473/-	03.07.2014	554650/-
7.	4,26,654/-	20.02.2015	530851/-
8.	6,00,000/-	15.10.2015	704456/-
9.	63,029.07/-	05.12.2015	73051/-
10.	2,96,210/-	18.03.2016	334193/-
11.	1,49,500/-	23.08.2016	145854/-
12.	1,52,800/-	26.10.2017	184399/-
13.	2,00,000/-	13.02.2018	161681/-
Total amount:3178396.07 /-			3953493/ -

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Total payable to complainant(3178396.07 + 3953493): 71,31,889.07/-

Complaint no. 1369 of 2025

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 25.08.2026 (in ₹)
1.	3,00,000/-	23.08.2012	454133 /-
2.	1,80,000/-	22.11.2012	267633/-
3.	63,203/-	16.05.2013	90701/-
4.	8,708/-	17.06.2013	12414/-
5.	3,31,397.46/-	06.08.2013	467537/-
6.	4,26,654.15/-	30.04.2014	568219/-
7.	4,26,655/-	07.11.2014	544108/-
8.	3,66,609/-	19.06.2015	443233/-
9.	3,68,831/-	09.10.2015	433697/-
10.	2,96,228/-	16.02.2016	336931/-
11.	1,49,365/-	18.07.2016	163126/-
12.	1,49,366/-	30.06.2017	147791/-
13.	2,00137/-	05.01.2018	186835/-
Total amount:3267153.61 /-			4116358 /-
Total payable to complainant(3267153.61 +4116358): 73,83,511.61/-			

Rathee

56. The complainant, vide relief clause (ii)and (iii), is also seeking ₹10,00,000/- as compensation towards grave injustice, mental agony & trauma, physical harassment and financial loss, and ₹1,00,000/- towards litigation charges respectively. It is observed that the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 6745-6749 of 2021, M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors. (supra)***, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18, and 19 of the RERA Act, 2016. The Court further clarified that such claims are to be adjudicated by the learned Adjudicating Officer under Section 71 of the Act, 2016, and the quantum of compensation and legal expenses is to be determined having due regard to the factors enumerated in Section 72 of the Act, 2016. Accordingly, the Authority observes that the claim for compensation and litigation costs cannot be adjudicated in the present proceedings. The complainant is therefore, advised to approach the learned Adjudicating Officer for seeking relief in respect of compensation and litigation expenses.

G. DECISION OF THE AUTHORITY

57. 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. In Complaint no. 1364 of 2025 respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹ 71,31,889.07/- to the complainant as specified in para 55 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.

ii. In Complaint no. 1369 of 2025 respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹ 73,83,511.61/- to the complainant as specified in para 55 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.

iii. 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.

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

Rathee

DR. GEETA RATHEE SINGH
[MEMBER]