



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	950 of 2025
Date of filing.:	22.07.2025
First date of hearing.:	16.09.2025
Date of decision.:	07.07.2026

1. Manjit Solanki S/o Sh. Mahavir Singh

2. Pankaj Rani

....COMPLAINANTS

R/o: VPO Achhej Tehsil,

Jhajjar, Haryana, 124106

VERSUS

M/s Omaxe Ltd

....RESPONDENT

Regd. office.-7, Local Shopping Centre,

Kalkaji, New Delhi- 110019 through its

Managing Director/Authorised Signatory.

**Present:** Adv A S Nirmaan, Learned Counsel for Complainants  
through VC

Adv. Ankit Kumar, Proxy Counsel for Adv. Munish Gupta,  
Learned Counsel for 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.	<b>DTCP License no.</b>	<b>109 of 2008 dated 27.05.2008</b>
	Licensed area	12.54 Acre
4.	<b>RERA Registered/not registered</b>	Registration vide registration no. 202 of 2017 dated 31.12.2021
5.	<b>Date of allotment</b>	20.11.2013



6.	Details of unit.	101, First Floor, RHBH/Tower-22 admeasuring 1280 sq. fts
7.	Date of Builder buyer agreement	18.04.2014
8.	Due date of possession	13.08.2019
9.	Total sale consideration	₹ 32,96,529.20/-
10.	Amount paid by complainants	₹ 27,86,947.41/-
11.	Offer of possession.	None

### B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. In this case a residential unit had been booked in the project of the respondent namely Shubhangan, situated at Bahadurgarh by one original allottee namely Sh. Ashwini Kalra. Thereafter, vide application dated 23.04.2013 the present complainants stepped into the shoes of the original allottee. Vide allotment letter dated 20.11.2013 complainants were allotted unit bearing no. 101, First Floor, RHBH/Tower-22 admeasuring 1280 sq. fts in the said project for a total sale consideration of ₹ 32,96,529.20/-.

4. That a builder buyer agreement was signed between the parties on 18.04.2014. As per clause 40(a) of the agreement, the possession of the unit in question was to be delivered within a period of 18 months from the

*[Handwritten Signature]*

signing of the agreement or with an extended period of 6 months. Meaning thereby that the possession of the unit in question should have been handed over by 18.04.2016.

5. That the complainants had opted for construction linked payment plan. All the payments had been made timely by the complainants within stipulated time. That till date the complainants have paid an amount of ₹ 27,86,947.41/- to the respondent in lieu of the booked unit.
6. It is submitted that there has been an inordinate delay in completing the construction of the project and handing over of possession on the part of the respondent. That the respondent vide letter dated 11.11.2019 raised a further demand of ₹ 3,09,939.64/- however, there was no corroborating construction at the site of the project and delivery of possession was uncertain. Since, the respondent did not give any satisfactory answer with regard to the date of delivery of possession, the complainants were constrained to stop making further payments.
7. That the respondent instead of delivering possession, cancelled the unit of the complainants vide letter dated 06.08.2020.
8. For the past 10 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. Hence, the present complaint, seeking refund of paid amount on account of deficiency in services on the part of the respondent.



### C. RELIEF SOUGHT

9. The complainants in present complaint seeks following relief:

- i. Direct the respondent to refund the paid amount to the complainants along with prescribed rate of interest from the date of payment till actual realization.

10. During the course of arguments, learned counsel for the complainants reiterated the submissions as made in the complaint file. He further submitted that respondent had illegally cancelled the allotment of the complainants and even further failed to return the amount after forfeiture.

### D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 05.12.2025 pleading therein:

11. That the unit in question was initially booked by Sh. Ashwini Lakra in the year 2012. The complainants purchased the unit from the original allottee. The complainants were thereafter duly allotted unit bearing no. 101, First Floor, RIIBH/Tower-22 admeasuring 1280 sq. fts in the project vide allotment letter dated 20.11.2013.

12. That the present complaint has been filed primarily on ground of delay in handing over possession of the unit in question. It is submitted that the complainants defaulted in making payment to the respondent as per the



payment plan. The unit in question has already been cancelled vide cancellation letter dated 06.08.2020 due to non payment of the dues by the complainants. That the cancellation letter was duly served upon the complainants and the complainants having knowledge with regard to the same did not raise any grievance qua the cancellation till the filing of the present complaint.

13. 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 Real Estate Regulatory 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.

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

15. That the present complaint is barred by limitation, as per the complainants version the unit has already been cancelled in the year 2020 and thereafter, the complainants did not raise any grievance till the filing of the present complaint.

Thus, deserves to be dismissed.

16. 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 occupation



certificate has not been received for the tower in which the unit of the complainant is situated.

#### **E. ISSUES FOR ADJUDICATION**

17. Whether the complainants are entitled to receive refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

#### **F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

18. In light of the background of the matter as captured in this order and also the arguments rendered by both parties, Authority observes that the respondent in the present complaint has raised a preliminary objection with respect to present complaint being barred by limitation. In this regard it is observed that since, the promoter has till date failed to fulfil its obligations to hand over the possession of unit in question in its project as per the terms agreed between the parties, all the while retaining the amount paid by the complainant, thus, the cause of action is recurring and the ground that complaint is barred by limitation stands rejected. Further reference in this regard is made to the judgement of Apex court **Civil Appeal no. 4367 of 2004** titled as **M.P Steel Corporation v/s Commissioner of Central Excise** wherein it is observed that the Indian Limitation Act applies only to courts and does not apply to quasi-judicial bodies. The scope of the various articles in this division cannot be held to have been so enlarged as to include within



them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 thus would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

19. As per facts, the complainants 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 2013. Vide allotment letter dated 20.11.2013 complainants were allotted unit bearing no. 101, First Floor, RHBH/Tower-22 admeasuring 1280 sq. fts in the said project for a total sale consideration of ₹32,96,529.20/-. That the complainants have paid a total amount of ₹ 27,86,947.41/- against the said unit. A builder buyer agreement was executed between the parties on 18.04.2014. It has been alleged by the complainants that the respondent failed to construct and deliver the possession of the unit in a stipulated manner. Rather the respondent had illegally cancelled the allotment of the complainants vide letter dated 06.08.2020. 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.



20. 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.
21. As per clause 40(a) of the builder buyer agreement dated 18.04.2014, possession of the unit in question should have been handed over within a period of 18 months along with an extended period of further 6 months, i.e by 18.04.2016. However, respondent failed to deliver the possession of the unit within stipulated time.
22. 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 18.04.2016. 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.

23. The respondent in its submissions has submitted that the allotment of the complainants got cancelled on 06.08.2020 on account of non payment of dues. It has been alleged by the complainants that possession of the unit in question was to delivered by 18.04.2016 however, by the year 2019, no prominent construction work had been carried out at the site of the project and despite repeated request the respondent failed to satisfactorily provide a timeline for delivery of possession, thus, constraining the complainants to make payment of further instalment amount since it was a construction linked plan. In this regard it is observed that the total sale consideration of the unit is ₹ 32,96,529.20/- against which the complainants had paid an amount of ₹ 27,86,947.41/- to the respondent by 09.10.2018. The respondent in its reply has alleged that the complainants failed to make payment of due amount even after issuing repeated demand/reminder letters. Now, a bare perusal of the demand/reminder letters placed on record by the respondent reveals that in none of these letters the respondent had specified the stage of construction corroborating which the said demand had been raised. This was a construction linked plan and the complainants had already paid 95% of the sale consideration amount by the year 2018 itself. The respondent could not have asked further demands without providing proof of



construction. The complainants could not have been forced to pay further demands without that stage being achieved. During the course of arguments, the learned counsel for the respondent was asked with regard to the status of occupation certificate for the project in question, in response, learned counsel for the respondent has submitted that occupation certificate for the tower in which the unit of the complainants is situated is yet to be received. Thus, even today, the respondent is not in a position to issue a valid offer of possession to the complainant. In light of this fact, the alleged cancellation of the allotment vide letter dated 06.08.2020 is found to be wrong and bad in the eyes of law. The respondent could not have cancelled the unit of the complainants without completing the construction works in a timely manner. Thus the cancellation letter dated 06.08.2020 is hereby quashed.

24. Fact of the matter is that even after a lapse of 10 years from the due date of delivery of possession i.e 18.04.2016, the occupation certificate is yet to be received 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 complainants 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 2013. Complainants in this case do not wish to continue with the project on account of inordinate

  
Lawyer

delay caused in delivery of possession and are hence seeking refund of paid amount along with interest as per RERD Act 2016.

25. 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."*

26. 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 complainants wish 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 complainants are 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(z) 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"*

27. Hence, Authority directs respondent to refund to the complainants 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.

28. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 07.07.2026) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 07.07.2026 (in ₹)
1.	3,30,017.20/-	18.06.2013	4,65,590/-
2.	3,00,000/-	20.08.2018	2,55,561/-
3.	7,96,093/-	11.10.2018	6,65,918/-
4.	3,00,000/-	24.08.2012	4,49,694/-



5.	1,89,236.99/-	19.11.2012	2,78,791/-
6.	4,35,000/-	24.06.2015	5,18,968/-
7.	4,36,600/-	15.02.2017	4,43,107/-
<b>Total:</b>	<b>27,86,947.41/-</b>		<b>30,77,629/-</b>
<b>Total payable to complainant(27,86,947.41+30,77,629 ):</b> <b>58,64,576.41/-</b>			

### G. DECISION OF THE AUTHORITY

29. 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 @ 10.80% of ₹ 58,64,576.41/- to the complainants as specified in para 28 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.



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



DR. GEETA RATHEE SINGH

[MEMBER]

