HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**932 of 2024**
Date of filing.:	**08.08.2024**
First date of hearing.:	**10.12.2024**
Date of decision.:	**01.09.2026**

Laxmi Kant Sharma S/o Sh. Bansi Dhar Sharma

R/o: Flat no. 151, Shanti Lok, HUDA Bypass

Sector-03, Part 2, Rewari, Haryana-123401 ....COMPLAINANT

VERSUS

1. M/s Omaxe Ltd

Regd. office.-19B, First Floor

Omaxe Celebration Mall, Sohna Road

Gurugram, Haryana122001

2. Omaxe House

Regd. office- 7, Local Shopping Centre,

Kalkaji, New Delhi- 110019.

3. Omaxe Shubhangan

Sector-4A Village Kassar ....RESPONDENTS

Present: Adv Anil Solanki, Learned Counsel for Complainant through VC
Adv. Rahul Diwan, Learned Counsel for Respondents. through VC

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**	19.12.2013
6.	**Details of unit.**	702, Tower No. 24, Seventh Floor measuring 2215 Sq. Ft. super area
7.	**Date of Builder buyer agreement**	None
8.	**Due date of possession**	19.12.2016(taken as three years from date of allotment)
9.	**Total sale consideration**	₹ 55,09,800/- (as per payment plan annexed with allotment letter)
10.	**Amount paid by complainants**	₹54,70,656.17/-
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 Sh. Arun Jindal in the year 2012 by paying a booking amount of Rs 4,50,000/-. Thereafter, vide application dated 26.03.2013 for assignment of allotment the present complainant stepped into the shoes of the original allottee. Vide provisional allotment letter dated 19.12.2013 complainant was allotted unit bearing no. 702, Tower No. 24, Seventh Floor measuring 2215 Sq. Ft. super area in the said project. The copy of various payments receipts and letter of

allotment alongwith payment schedule dated 19.12.2013 are annexed herein as ANNEXURE C-3 TO C-5, respectively.

4. That after passing of more than 3 years from the date of booking and 2 years after the allotment of flat unit to the complainant no substantial construction was undertaken at the site and only plinth level construction was visible at site, but respondents, despite the being construction linked plan keep on illegally raising demand for payments, and illegally charging penal interest. Faced with the situation, the complainant vide letter dated 08.05.2015 had approached the respondent to waive-off the interest illegally charged as there was no construction at site. Respondent acknowledging and accepting the situation of construction has waived-off the penal interest with condition to deposit the payment due by 10.06.2015. The copy of letter dated 08.05.2015 and account statement dated 21.05.2015 with remarks of waiving off the interest are annexed herein as ANNEXURE C-6. The complainant, on assurance from the respondent and in hope that the construction will be commenced soon paid a further amount. That till date the complainant has paid an amount of ₹54,70,656.17/- towards installments, EDC, IDC, Tax etc., out of ₹55,09,800/- (Total sale consideration), which is almost 99% of the payment. The copy of the receipts are annexed herein as ANNEXURE C-9.

5. 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. The copy sample Flat Buyer's Agreement which the complainant got from another allottee is annexed herein as ANNEXURE C-10.

6. That complainant who is 75 years old was forced to make several visits to the office of the respondents and the several requests to handover the physical possession of the flat but the respondents have neither satisfactorily responded to those requests nor handed over the physical possession of the said unit.
7. That time was the essence of the contract and the same was duly agreed upon the parties at the time of entering into the agreement of sale of said unit. That respondent, despite of knowledge of this fact failed to adhere to the essential term builder buyer agreement causing irreparable loss to the complainant. The complainant visited the project site and was shocked to see that the project is far from completion. The copy of photos of the project is annexed herein as Annexure C-11.
8. That the complainant is no longer interested in the project and has made several requests to the respondents to refund the amount, alongwith the interest without any further delay, but no heed was paid towards the request of the complainant. Hence the present complaint.

Ratnee

C. RELIEF SOUGHT

9. The complainants in present complaint seeks following relief:

    i. In exercise of powers under Section 35, direct the respondent to place on record all statutory approvals and sanctions of the project; and/or

    ii. In exercise of powers under Section 35 of RERA and Rule 21 of RE (R&D), rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the competent authority and pending demand if any; and/or

    iii. To refund the entire amount of ₹54,70,656.17/- along with simple interest @ 18% p.a. from date of respective payment till the date of realization; and/or

    iv. To quash any/ all the illegal demands raised by the respondents- builder on account of pending installment, monthly maintenance charges, gst, interest on delayed payment, club charges and/or arrears of previous demands etc., as the same are in contravention of settled legal principles; and/or

    v. Any other relief as this hon'ble authority may deem fit and appropriate in the facts and circumstances of the present case.

Ratree

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 07.01.2025 pleading therein:

10. The unit in question was initially booked by Mr. Arun Jindal after paying an amount of Rs.4,50,000/- as an amount towards booking the unit. That the complainant had purchased the rights from the original allottee and made a joint representation for transferring the booking from original allottee in his name which was duly accepted by the respondents and the unit with all its rights were transferred in favour of the present complainant.

11. That the unit was transferred in the name of present complainant on 26.03.2013 and since no agreement/allotment letter was signed or executed with the original allottee, the respondents thereafter sent a letter dated 01.06.2013 (at page 25 of the complaint) to the complainant stating that his application was accepted and that the respondents will start the provisional allotment process shortly. That thereafter the unit was provisionally allotted to the present complainant on 29.11.2013 vide letter of the same date (at page 26 of the complaint) and the unit was finally allotted in favour of the present complainant on 19.12.2013 (C-5).

12. That the respondents sent a letter to the complainant on 06.03.2014 forwarding the allotment letter for execution of the builder buyer agreement. That till date the complainant has not executed the allotment letter and the payment schedule

appended at page 28 of the complaint is part of the same allotment letter/agreement. That later on 21.05.2015 the respondents again sent another letter with title of forwarding the allotment letter /Builder-Buyer's and the complainant duly received the agreement copy, but that was also never sent/executed by the complainant for reasons best known to him. That till date there exists no agreement between the complainant and respondents that governs the terms of allotment and states the duties, obligations, rights and liabilities of both the parties. That the same amounts to active concealment on part of the complainant and as such the complaint ought to be dismissed on this ground. Copy of the letters dated 06.03.2014 and 21.05.2015 are annexed hereto as Annexure R-2 colly.

13. That the sample agreement annexed as C-10 is pertaining to some other allottee and to some other unit and the same cannot govern the terms of allotment between the respondents and present complainant. That the possession terms of some other agreement are not binding on the present allottee/complainant and as such the allegations of the unit possession being delayed by more than 9 years from due date of possession is baseless and false.

14. That since the complainant had failed to sign or execute any allotment letter/Builder-buyer agreement till date there exists no agreement between the complainant and respondents that governs the terms of allotment and states the duties, obligations, rights and liabilities of both the parties. That the alleged visit by complainant to site of the project is denied as being baseless and false.

That the photographs annexed are denied as it can neither be said as to the date on which the same photographs were captured the same nor can they be established to be of the same project in question. It is stated that time is never of essence in agreements relating to immovable properties / construction.

15. That the complainant never made any request for refund of the money along with interest and the question of replying addressing his request does not arise. That no E-mail or letter has been annexed by the complainant in support of the baseless allegations. It is stated that in case the complainant wants to withdraw then applicable forfeiture charges would be applicable.

E. REJOINDER FILED BY THE COMPLAINANT

Learned counsel for the complainant filed rejoinder on 06.07.2026 pleading therein:

16. Complainant recently visited the site of the project in question and discovered that the respondent is utilising the unit of the complainant's for personal use as a site office. The latest photographs of the unit is annexed along with the rejoinder.

17. Respondents have indulged in unfair trade practices by luring the complainant into having paid almost the entire sale consideration amount and then deliberately stalling the execution of the agreement to keep the possession date open ended.

18. Since, the respondents have failed to execute a builder buyer agreement, the terms of the project's standard agreement and the RERA Model Agreement must be read into the contract. The respondents cannot distance themselves from the "Sample Flat Buyer Agreement".

19. It is the respondents who have failed to deliver the possession of the unit in question within stipulated time and hence the complainant is entitled to seek refund of the paid amount.

F. ARGUMENTS OF LEARNED COUNSELS OF BOTH PARTIES

20. Initiating his submissions, learned counsel for the complainant submitted that despite a lapse of more than 12 years from the date of allotment of the unit in question, the respondents have failed to deliver a legally valid possession to the complainant. Even at present, the respondents are utilising the unit in question for their personal gains and till date have given no intimation to the complainant with regard to completion of the same. Hence, the complainant having already waited for such a long time does not wish to wait any further and wants to withdraw from the project.

21. On the other hand, learned counsel for the respondents argued that the respondents have completed the construction of the project and have applied for occupation certificate on 18.02.2026 and the same is yet to be received. After receipt of occupation certificate, the respondents shall issue an offer of possession to the complainant.

G. ISSUES FOR ADJUDICATION

22. 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. OBSERVATIONS OF THE AUTHORITY

23. 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 19.12.2013 complainant was allotted unit bearing no. 702, Tower No. 24, Seventh Floor measuring 2215 Sq. Ft. super area in the said project for a total sale consideration of ₹55,09,800/-. That the complainant has paid a total amount of ₹54,70,656.17/- against the said unit. It has been alleged by the complainant that the respondent deliberately delayed the execution of builder buyer agreement. 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.

24. As per facts, the unit in question had been booked by the original allottee. Thereafter the present complainant stepped into the shoes of the original allottee by application for assignment dated 26.03.2013. The allotment letter qua the unit in question was issued in favour of the complainant on 19.12.2013. It is an admitted position on record that no builder buyer

agreement was ever executed between the parties in respect of the unit in question. Although the respondents have contended that the complainant failed to come forward for execution of the said agreement, the material placed on record does not sufficiently establish such default on the part of the complainant. The respondents have relied upon a letter dated 06.03.2014, along with the courier receipt of "India Post", and another letter dated 21.05.2015 bearing the handwritten acknowledgement of the complainant, Mr. Lakshmi Kant Sharma, whereby the complainant was called upon to execute and register the Agreement for Sale. However, mere issuance of such letters, in the absence of any subsequent correspondence or other cogent material demonstrating that the respondents took effective and persistent steps to conclude the process of execution and registration of the agreement, cannot by itself establish that the complainant was responsible for the non-execution of the agreement. Fact of the matter is that the respondents took a huge amount of money to the tune of ₹54,70,656.17/- from the complainant from 2012 till 2021 without executing any builder buyer agreement. Significantly, no further communication has been placed on record after 21.05.2015 to demonstrate any refusal, omission or deliberate failure on the part of the complainant to execute the agreement. Thus, the respondents have failed to discharge the burden of establishing that the complainant was at fault in this regard. The conduct of the respondents is further material in as much as the complainant had, as early as 08.05.2015, brought to their notice the lack of substantial construction at the project site and the consequential demand of penal interest. The respondents, while acknowledging the prevailing position, waived the penal interest subject to payment of the outstanding amount. The complainant thereafter continued to make payments in the bona fide expectation that the construction would progress and possession would ultimately be delivered. Despite the complainant having paid almost the entire sale consideration, the respondents have failed to deliver possession of the unit.

Since there is no builder buyer agreement executed between the parties, thus, the allotment letter dated 19.12.2013 is the contract that is binding on both parties. However, the allotment letter also does not provide for a due date of possession, therefore, in the absence of a due date in the allotment letter, 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 19.12.2013, the possession of the unit in question should have been delivered by 19.12.2016. Admittedly, the respondent failed to deliver possession of the unit in question within stipulated time.

25. Fact of the matter is that even after a lapse of more than 8 years from the due date of delivery of possession i.e 19.12.2016, the construction of the project is not complete and the respondent is not in a position to handover legal possession in foreseeable future. Complainant has apprised the Authority that the respondent is misutilising the unit in question for staff use and is not in a position to deliver a legally valid possession to the complainant. On the other hand, counsel for the respondent has apprised the Authority that respondent has filed for receipt of occupation certificate on 18.02.2026, however, the same is yet to be received. In this regard it is observed that the subsequent plea of the respondents that the construction has been completed and that an offer of possession would be issued after receipt of the occupation certificate also does not cure the prolonged delay already suffered by the complainant. The right of an allottee to seek withdrawal from a project cannot be defeated merely by a belated assertion that possession may be offered at some future point of time. Having regard to the extraordinary delay, the substantial amount already paid by the complainant and the admitted absence of a legally valid offer of possession as on the date of hearing, the complainant cannot reasonably be expected to remain bound to the project indefinitely. 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.

26.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 complainant has a legitimate right to seek withdrawal from the project. Accordingly, the relief of refund of the amount paid by the complainant, along with interest as permissible under the RERA Act, 2016, is liable to be allowed.

27.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*

Rathee

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."

28. 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.

29. 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.

30. 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"*

31.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.

32.Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 01.09.2026) and same is depicted in the table below:

Sr. No.	**Principal Amount (in ₹)**	**Date of Payment**	**Interest Accrued till date of order i.e 01.09.2026 (in ₹)**
1.	4,50,000/-	24.12.2012	665753/-
2.	2,31,850/-	04.03.2013	338209/-
3.	4,00,000/-	26.07.2013	566453/-
4.	3,71,900/-	28.10.2013	516315/-
5.	4,00,000/-	21.05.2015	487864/-
6.	3,44,070/-	27.05.2015	419038/-
7.	6,47,822/-	27.06.2015	783030/-
8.	1,00,000/-	22.01.2016	114687/-
9.	5,18,650/-	12.07.2016	568429/-
10.	5,18,508/-	22.10.2016	552624/-
11.	4,09,753.75/-	14.04.2017	415618/-
12.	2,59,253.84/-	20.06.2017	257825/-

13.	2,77,860/-	20.09.2017	268764/-
14.	2,60,494/-	16.08.2019	198398/-
15.	2,80,494.58/-	24.09.2021	149724/-
Total amount= 5470656.17/-			**6302731/-**
Total payable to complainant(5470656.17 +6302731)= 1,17,73,387.17/-			

33. Since, complainant wishes to withdraw from the project and refund of the paid amount along with interest has been allowed, therefore, the reliefs sought by the complainant with regard to furnishing of the complete record of statutory approvals and sanctions of the project, details of EDC/IDC and other statutory dues, as well as quashing of all alleged illegal demands raised by the respondents towards pending instalments, monthly maintenance charges, GST, interest on delayed payments, club charges and/or arrears of previous demands, cannot be granted in the present proceedings and are hence rejected.

I. DECISION OF THE AUTHORITY

34. 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:

Ratnee

i. Respondent is directed to refund the entire amounts along with interest of @ 10.80% ₹1,17,73,387.17/- to the complainant as specified in para 32 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.

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

Rathee

....

DR. GEETA RATHEE SINGH

[MEMBER]