



Complaint no. 379 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 379 OF 2020

Kamlesh Rani

....COMPLAINANT(S)

VERSUS

M/s Omaxe Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 12.10.2021**

**Hearing: 9th**

**Present: - Mr. Gautam Suhag, Counsel for the complainant  
Mr. Arjun Sharma, Counsel for respondent.**

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

Complainant herein is seeking possession of booked unit and delay interest in respect of unit bearing no. 601, Tower-10 in respondent's project namely Omaxe Shubhangan situated at Bahadurgarh. Complainant has already paid an amount of Rs 53,33,891/- against total sale consideration of Rs 56,09,800/-. Builder Buyer agreement was executed between the parties on 19.09.2014. As per clause 40(a) of buyers agreement, deemed date of

possession works out to 18.09.2016. However, it has been more than five years and respondent has failed to deliver possession of booked unit till date.

2. Learned counsel for the respondent submitted that he has already offered possession to the complainant on 06.03.2020 for carrying out finishing works and payment of balance sale consideration. But it is the complainant who has not come forward to take possession of the unit upon making payment of outstanding dues. Therefore, it is the complainant who is at fault here and thus not entitled to any relief.

3. Learned counsel for the complainant did not dispute the fact that possession has already been offered to the complainant and the complainant chose not to accept it. Her submission is that the said offer was not valid because the respondent is yet to receive occupation certificate. Learned counsel for the respondent submitted that an application for grant of occupation certificate for the project has been filed with the Department of Town and Country Planning on 25.07.2019 but the same is still awaited.

4. Authority vide its order dated 04.03.2021 had observed as follows:

*“ 4. After considering the pleadings of Learned counsels and documents on record Authority observes that till date occupation certificate from the Department of Town and Country Planning has not been received. The offer of possession to the allottees is not legal and binding. Therefore, the complainant is entitled to claim delay interest from deemed date of possession as mentioned in builder buyer agreement to the date by which the*



*respondent promoter will obtain occupation certificate and provide the copy of the same to the complainant. Authority further directs both parties to prepare statement of accounts in respect of payable and receivable amounts till date of order, as per principles laid down in Complaint no. 113 of 2018- Madhu Sareen Vs B.P.T.P Pvt Ltd and file it by 31.03.2021."*

5. Learned counsel for the complainant submitted that complainant had paid approx Rs 45 lakh to the respondent by the year 2016. Respondent applied for occupation certificate on 25.08.2019 which has not been granted till date. He averred that offer of possession shall be acceptable to complainant only after respondent has obtained occupation certificate. Further complainant is entitled to delay interest from deemed date of possession till a valid offer of possession is made to the complainant after obtaining occupation certificate.

6. In view of above, Authority observes that possession to the complainant as per terms of Builder Buyer agreement entered between the parties, was required to be delivered by 18.09.2016 but possession was offered to the complainant in March 2020 after a delay of six years. Said offer was not acceptable to the complainant since the respondent is yet to receive occupation certificate from the concerned department. In these circumstances, the respondent is directed to send fresh offer of possession of unit to the complainant after receiving occupation certificate.

7. As per provisions of SECTION 18 of RERA Act, the complainant is entitled to monthly interest on the payments made from the date possession was due upto the date of offer of possession. It is therefore decide that upfront payment of delay interest amounting to Rs 22,02,826/- calculated in terms of Rule 15 of HRERA Rules, 2017 i.e SBI MCLR + 2% (9.30%) for the period ranging from 18.09.2016 (deemed date of possession) to 12.10.2021 (date of order) is awarded to the complainant and in addition monthly interest of Rs 36,218/- shall be payable henceforth upto the date of actual handing over of the possession after obtaining occupation certificate. Authority further orders that the complainant will remain liable to pay balance consideration amount to the respondent as and when a valid offer of possession duly supported with occupation certificate is made to her. Respondent shall issue a fresh statement of account at the time of offering possession.

8. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 46,73,242/-/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of Service Tax amounting to Rs 2,17,429/- and Rs 4,43,000/- paid on account of EDC/IDC from total paid amount of Rs 53,33,671/- These charges have been recorded as per the receipts annexed by the respondent in its reply filed and statement of account dated 06.03.2020 annexed as Annexure R- 91 in the reply itself. The amount of such taxes is not payable to the builder and are rather required to passed on by the builder to the concerned revenue department/authorities. If a

builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

9. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

10. Respondent is directed to pay the complainants an amount of Rs 22,02,826/- as upfront delay interest within 45 days of uploading of this order on the website of the Authority. The monthly interest of Rs 36,218/- will commence w.e.f. 12.10.2021.

11. **Disposed of** in above terms. File be consigned to record room.



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RAJAN GUPTA  
[CHAIRMAN]



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DILBAG SINGH SIHAG  
[MEMBER]