BEFORE SH. R.S.RAI, ADJUDICATING OFFICER, THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA MARG, CHANDIGARH.

Complaint No. AdC No.0030 OF 2023

Date of Institution:26.04.2023

Date of Decision:29.09.2025

Amandeep Kaur, R/o House No.1320, Sector-42B, Chandigarh, PIN Code 160043

.....Complainant

Versus

M/S Omaxe Chandigarh Extension Developers Private Limited, Corporate Office; 7 Local New Delhi, Shopping Centre, Kalkaji, New Delhi, Delhi, PIN Code 110019.
Zonal Office India Trade, Tower, Baddi Kurali Road, New Mullanpur, Sub-Tehsil Majri, New Chandigarh, District & State Sahibzada Ajit Singh Nagar (Mohali), Punjab PIN Code 140901.

.....Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

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Present: Mr. Manpreet Singh Longia Advocate, for the complainant
Mr. Arjun Sharma Advocate, for the respondent.

ORDER

Present complaint had been filed by the complainant, under Section 31 of the Real Estate

(Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") read with Rules 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules) against the respondent promoter, seeking compensation on account of delay in handing over possession of apartment in the project 'Integrated Residential Township Phase -3C Omaxe New Chandigarh'.

2. Brief gist of the complaint is that Integrated Residential Township Phase-3C popularly named as Celestia Toyal Premier, was being developed by M/s Omaxe New Chandigarh Developer Pvt. Ltd. i.e the respondent. His project was registered having registration No.PBRERA-SAS 81-PR0403 (C-1). Complainant on 19.11.2020, booked an apartment No."CRPC/UGF/535A4" having super area of 2165 Sq. Ft. and carpet area of 1470 Sq. Ft on upper ground floor of building No.535A4. Agreement to sell was entered into 14.12.2020. Total price of the apartment was Rs.93,29,066/-. At the time of agreement, it was promised by respondent that possession of the apartment would be handed over on 28.12.2022. Thereafter, the complainant kept on paying the amounts against sale price of apartment, as per payment plan and as demand of the promoter and till date she has paid a total amount of Rs.90,94,693.82/-. It is further stated that due date has

already gone and the project is at the nascent stage and far away from completion. That no time has been stated as to when the said project would be completed. Till today, more than two years have elapsed and the respondent has not completed the project, muchless has obtained any completion or occupation certificate. Facing this harassment, mental agony, the complainant moved a complaint before Authority bearing GC No.118 of 2023 for directing the respondent to hand over the possession and also sought interest on the payment made, on account of delay in delivering possession. The said complaint is pending before the Authority. The complainant is also entitled to for award of compensation to the tune of Rs.10 lacs alongwith interest due to the harassment and mental agony being faced by the complainant as the respondent is not able to give possession of the flat in question and complainant is not able to reside peacefully and happily inspite of spending Rs.90,94,693.82/- almost her whole life savings. The complainant is facing mental agony due to non delivery of possession by the respondent, because the complainant and his family are having the emotions attached with their own house. Even till date, no date has been promised or stated for delivery of possession. Further, it is stated that the money paid by the complainant has been used by the promoter for his own personal use and

they have not furnished any detail of the account before the Authority. Moreover, money which has been deposited by the complainant has also not been withdrawn proportionately to percentage of completion of the project. The money of the complainant has been used by the promoter for his disproportionate gain for purchase of more land and not building the said apartment. Not only the complainant's money, but money obtained from other apartment buyers, has also been siphoned off and has been used for his other projects, by the respondent. Moreover, complainant's case is not solitary case where the promoter has defaulted and has failed to deliver the timely possession of project. Many persons fed up with the repetitive defaults have also sought refund of their amounts. Further, it is stated that the complainant is entitled for grant of compensation to the tune of Rs.10 lacs and complainant is also entitled to Rs.1,50,000/- as litigation expenses as she has constrained to knock the door of the Court. Hence, the present complaint for compensation alongwith expenses of litigation.

3. Notice of the complaint was issued to the respondent, who put in appearance and contested the complaint by taking preliminary objections to the effect that M/s Omaxe New Chandigarh Developers Pvt. Ltd (formerly known as M/s Omaxe Chandigarh Extension Developers Pvt.

Ltd) i.e the respondent is a company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at 10, Local Shopping Centre, Kalkaji, New Delhi-110019 and Zonal Office at India Trade Tower Ist Floor, Madhya Marg Extn. Road, New Chandigarh, near Mullanpur District SAS Nagar, Punjab 140901. The respondent is reputed Real Estate Company and enjoys a great goodwill in the real estate market. It has developed and given successful possession of several residential and commercial townships etc. It is stated that the name of "Omaxe Chandigarh Extension Developers Pvt. Ltd" has been changed to "Omaxe New Chandigarh Developers Pvt. Ltd" vide letter dated 17.10.2019 issued by the registrar of Companies, Delhi. The respondent company through its authorized signatory/representative, Sh. Deepanjit Singh, who is well conversant with the facts of the present case has filed this reply, who stands duly authorized to do so, vide resolution dated 09.08.2022 to institute sign, file and verify the present reply. Respondent denied the submissions as set forth in the complaint to the extent that same are contrary to the facts of the case. The complaint filed by the complainant is misconceived and erroneous and untenable in the eyes of law. The complainant has misled the court by stating untrue and incomplete facts. The claim as raised cannot be said to be maintainable and is liable to

be rejected. Further, it is stated that once the complainant has exercised her right to file complaint seeking possession alongwith interest on the payment made, alleging delay in delivering the possession, she is no longer entitled to seek compensation under the Real Estate (Regulation and Development) Act, 2016 and the agreement for sale executed between the parties. Under the Act, as well as agreement for sale, the allottee can seek compensation only if he or she wishes to withdraw from the project, thereby seeking refund of the deposited amount alongwith interest. In case the allottee does not intend to withdraw from the project, all he or she is entitled to is interest at the prescribed rate, for every month of delay, till the handing over of the possession, as mentioned in Section 18 of the Act.

Further, it is submitted that even as per the agreement for sale, executed between the parties, the complainant is not entitled to seek compensation if she does not withdraw from the project. The agreement clearly states that where the possession is delayed and still the complainant intends to continue with the allotment, all she is entitled to, is interest for every month of delay on the amount deposited by her. Section 18 of the Act and Clause 9 of the agreement for sale, make it clear that if the allottee intends to continue with the allotment, even after delay in

handing over the possession, all he or she is entitled to is interest for every month of delay till the handing over of the possession. It is submitted that allotment letter/agreement has been duly signed by the complainant, accepting the contents. Further, it is stated that in view of the settled law in a plethora of decisions of the Hon'ble Supreme Court of India, whereby it has categorically been laid down that the agreed clauses of contract, are binding on the parties and the courts shall not interfere with the terms and conditions agreed between the parties. It is submitted that admittedly, in view of clause 7.1 of the agreement, the possession of the unit in question had to be handed over on 28th December, 2022, or as per extension given by RERA. Further, it is relevant to mention here that the RERA Authority has already extended the period of completion of the said project upto 11th August, 2023. Thus, in view of above said fact, there is no delay to hand over the possession and the present complaint is pre-mature and is liable to be dismissed. The perusal of complaint would reveal that the complainant has failed to make out a case keeping in view the factors specified in section 72 of the Act. Furthermore, the respondent in order to complete the project has spent hundreds of crores of rupees in mobilizing resources, generating and creating infrastructure, main power, building material, electrical equipments, sewerage

systems, water pipelines and other amenities to make living of the allottees in the project comfortable. Denying rest of the averments of the complaint, a prayer has been made for dismissal of the complaint.

4. Rejoinder to the reply was not filed by the complainant, however, the complainant has verbally reiterated the contents of her complaint and denied those of the reply, filed by the respondent.

5. Violations and contraventions contained in the complaint were put to the representative for the respondent. He totally denied all of them, including allegations of the complainant. Thereafter, the complaint was proceeded for further enquiry.

6. I have heard the representatives of the parties, who addressed the arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

Admittedly, the flat in question, was got booked by the complainant with the respondent and agreement in this regard was executed on 14.12.2020. Sale price of the apartment was settled as Rs.93,29,066/- and its possession was to be delivered by the respondent on 28.12.2022. The complainant paid an amount of Rs.90,94,693.82, but possession was not delivered to her, by the respondent. So

she has filed this complaint seeking compensation for causing delay in delivering possession of the flat alongwith litigation expenses, as detailed in Para No.2 of this order. On the other hand, learned representative of the respondent mainly contested this case on the ground that the complainant has already exercised her right to claim interest etc., on the amount paid by her, due to delay in possession of the flat. Meaning thereby, she has not withdrawn from the project, so she is not entitled for compensation and litigation expenses as per Section 18(1) of the Act. Keeping in view the pleadings and submissions of both the parties, for proper and effective disposal of this complaint, perusal of Section 18 of the Act is very important, which is reproduced as under:-

> *"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) xxxx xxxx*
>
> *he shall be liable on demand to the allottees,* ***in case the allottee wishes to withdraw from the project****, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such*

rate as may be prescribed in this behalf ***including compensation*** *in the manner as provided under this Act*

"Provided that where an ***allottee does not intend to withdraw*** *from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

A close scrutiny of the aforesaid Section 18(1) of the Act leaves no manner of doubt that this Section deals with the matters in which the project of the case is not completed by the promoter, within the stipulated period as per terms and conditions settled between the parties, then the allottee has the option of withdrawing from the project and seek the relief of refund of the paid amount alongwith interest, as per rules and also compensation. However, if the complainant chooses to remain in the project, then the only remedy provided for the default of the promoter in completion of the project, is to get interest on the paid amount from the stipulated date of possession, till the actual date of delivery of possession.

7. Now coming to the case in hand, admittedly, the complainant has not withdrawn from the project, rather, she has availed the remedy of claiming interest on the paid amount for the delayed period, before the Hon'ble Authority. In view of findings of our Hon'ble Supreme Court

in **Civil Appeal 6745-6749 of 2021, titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others etc.**, alongwith connected appeal decided on 11.11.2021, remedy seeking relief of Interest, Rent Amount, lies with the Hon'ble Regulatory Authority (RERA), whereas remedy qua compensation lies with this Bench. In the case in hand, admittedly the complainant has chosen to continue with the project, so she is not entitled to seek compensation under the Act, as is clear from above mentioned Section 18 (1) of the Act. Wording of this provision of the Act, makes it crystal clear that allottee/complainant can only seek compensation, if he/she withdraws from the project. Otherwise, if he/she does not intend to withdraw from the project, he /she shall be paid only interest for every month of delay, till handing over of the possession, at such rate as may be prescribed. Keeping in view all these facts and circumstances, coupled with Section 18 of the Act, since the complainant has not withdrawn from the project, so she is not entitled for compensation, as claimed by her through this complaint, Resultantly, she is also not entitled for litigation expenses. So no case is made out in her favour for granting any relief to her. Accordingly, this complaint deserves dismissal.

8. As a result of my above discussion, this complaint stands dismissed and disposed of, with no order as to costs.

A copy of this order be sent to both the parties, free of costs, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:29.09.2025

28/8/2025

(Rajinder Singh Rai)
Adjudicating Officer,
RERA, Punjab.