

**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. RERA/AdC No.0070 OF 2024

Date of Institution:17.05.2024

Date of Decision:30.09.2025

Vikrant Tyagi, R/o # 376/4, Adhakri Enclave, Jabalpur Cantt,
Jabalpur, Madhya Pradesh, Pin Code 482001.

.....Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.,
Through MD, Omaxe New Chandigarh, Kharar,
Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code
140901.
2. Bhupendra Singh, B-16, Ist Floor, East of Kailash, New
Delhi South Delhi, Delhi-110065.

.....Respondents

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

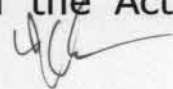
Present: Mr.S.K.Tripathi Havaladar, representative for
the complainant.
Mr.Arjun Sharma Advocate, for the
respondents.

ORDER

Present complaint has 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 Rule 37 of the Punjab

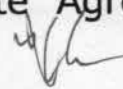
State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules) against the respondents/promoters seeking compensation on account of delay in handing over possession of apartment, alongwith litigation expenses in the "The Lake" project situated at Omaxe, New Chandigarh.

2. As per complaint, complainant Vikrant Tyagi had booked a residential flat in the Project "The Lake" of the respondents, as detailed in the complaint, for a total sale consideration of Rs.64,83,295.25 under Subvention Scheme. An allotment letter was issued, and builder buyer's agreement dated 23.11.2015 was also executed between the parties, as per which possession of the unit was to be delivered to the complainant by 23.05.2019. But the respondents failed to do so, even after expiry of said date i.e 108 months from the date of booking i.e 11.05.2015 and also after RERA's revised date 31.12.2022. That respondent's deliberate transfer of a subvention amount totaling Rs.39,69,245/- from the overall home loan sum of Rs.49,20,976/- without due regard for equitable terms, represents a clear case of disproportionate gain an unfair advantage. That amount paid by complainant, so far, is Rs.42,70,607/- including booking amount of Rs.5,38,415/-. But fraudulent acts and behavior of the respondents, blatantly contravene the provisions of the Act, leading to



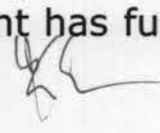
both financial loss and mental distress for the complainant. That through deceitful practice and unfair conduct, funds were channeled to gain an unlawful advantage, placing the complainant in a precarious position and this misconduct of the respondents, resulted in a deficiency of assured services, and it has also violated the provisions of Section 72, Section 4 (2) (b) of the Act. Thus, the respondents have derived unjust financial gain through fraudulent practice and unfair conduct. It is further averred that the basis for seeking compensation arising from these illicit activities and unfair practices is delineated below:-

- a. The respondents secured a loan amount of Rs.650/- crore from PNBHFL, exceeding the Project Cost of Rs.629.40 crore.
- b. The entirety of the loan disbursed by PNBHFL was utilized by the Respondents without ensuring timely possession, issuing spurious demands directly to the complainant instead of PNBHFL, thereby breaching provisions outlined in Part III of the Allotment Letter and Tripartite Agreement. That this conduct, compounded by substantial interest charges despite possessing ample liquidity indicates a deliberate attempt to gain an unfair advantage.
- c. That the respondents deliberately left crucial details, such as dates, blank in the Tripartite Agreement (TPA),



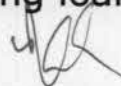
facilitating repetitive extensions of a clandestine Memorandum of Understanding (MoU) with PNBHFL (Paragraph 18 of TPA), the contents of which have been withheld from the complainant.

That the unjust advantages accrued by the respondents through fraudulent activities and unfair practices, can be quantified based on the total loan amount received from PNBHFL, which stands at Rs.49.21 Lakh. This constitutes a disproportionate gain for the respondents. That the egregious nature of the respondent's actions and the significant financial harm suffered by the complainant, he seeks compensation of Rs.50 lakh from the respondents, equivalent to the loan amount. That the complainant seeks compensation in accordance with Section 72 (b) of the Act 2016, citing severe mental distress resulting from Trust Deficit, Delayed Possession, and prolonged suffering spanning over 9 years. A sum of Rs.10/- lakh is warranted, considering the profound negative impact on daily life and the absence of adequate remedies. That furthermore, reimbursement for legal fees totaling Rs.2,50,000/- is sought under Section 72(c). That the total compensation sought amounting to Rs.62.50 say 63 lakhs, comprising Rs.50/- lakh for financial losses, Rs.10 lakh for mental distress, and Rs.2.50 lakh for legal expenses as per Section 72 of the Act 2016. That the complainant has further sought

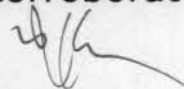


compensation of Rs.60 Lakhs for disproportionate gain, unfair advantage, financial loss incurred due to the default, the repetitive nature of the default, continued harassment, mental pain caused and agony suffered as per Section 71 and Section 72 of Act. Hence, the present complaint.

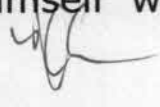
3. Respondents put in appearance and contested this complaint, by denying the submissions and contentions set forth in it, being incorrect. That the complainant has not approached the Authority with clean hands and has tried to mislead it, by making incorrect and false averments, in the complaint. That perusal of this frivolous and vexatious complaint would reveal that complainant is seeking compensation of Rs.60,00,000/- and litigation expenses of Rs.2,50,000/- and thereafter increased to Rs.3,00,000/- by making vague allegations. Further, it is averred that disbursement of loan amount by Punjab National Bank to the respondent-company without due regard to equitable terms and the said allegation is made by complainant by relying upon i.e emails exchanged between the complainant and Punjab National Bank. That complainant has tried to mislead this Bench by relying upon those emails/ correspondence with Punjab National Bank to infer that the loan was illegally disbursed by PNB to the respondent-company. That the complainant had put certain queries to PNB qua disbursement of loan, reason for not paying loan installment,



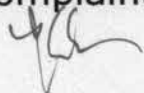
interest, copy of Tripartite Agreement etc., to which PNB had duly replied, but neither in complainant's emails nor in reply, to said emails by PNB, there is any allegation against the respondents to hold them liable, in any manner. That PNB carried out expeditious disbursement of funds, thereby releasing Rs.39,69,245/- to the respondent-company between 04.09.2016 to 04.12.2017. Further, it is an established fact that PNB in its email dated 05.02.2022 annexed as Annexure A/3 at page 59 of the complaint and in response to complainant's email dated 04.02.2022 asking PNB whether it ever received any demand from the respondent-company for releasing any amount. That in response to the said query of the complainant, PNB stated '*The demand request is raised from customer end only and not by the builder end*'. Further, second query of complainant is that how the loan amount has been paid to the respondent-company for the said unit till date, which is replied by PNB that '*The disbursement request form is attached with the mail*'. That complainant is making allegation against PNB that there is delay in disbursing the loan amount, whereas, in the present complainant, he has taken u-turn and changed his stance to allege expeditious disbursement of loan amount by PNB. That complainant relying upon Annexure A/4 at page 63 of the complaint, which is nothing, but the payment schedule, which does not corroborate with the



aforementioned vague allegations of the complainant. Apart from the afore mentioned allegations, complainant has alleged that respondents had secured loan of Rs.650.40 crore from PNBHFL, which exceeded the project cost of Rs.629.40 crore. Said loan amount has nothing to do with the facts of the present case. Further, complainant has alleged that respondents have utilized the loan amount without ensuring timely possession and has issued demands directly to him, thereby breaching provisions outlined in Part III of the Allotment Letter and Tripartite Agreement. That part III of the Allotment Letter is a payment schedule and how the same has been breached, has not been explained by the complainant. Further, which provision of the TPA has been violated, has also not been specified. Complainant by referring Para 18 of TPA, has alleged that respondents have deliberately left crucial details, such as dates, blank in TPA thereby facilitating repetitive extensions of clandestine MOU with PNBHFL. That paragraph 18 of TPA provides that bank shall monitor and periodically evaluate the project compliance with agreed milestone and performance levels. That complainant is serving as Army Officer and the TPA has been signed by him. That TPA being an agreement between the complainant, respondents and the Bank, governing the terms of loan forwarded by the Bank to him and he signed the same after completely satisfying himself without any



coercion. Complainant in order to succeed in his ulterior motive has leveled baseless and vague allegations as such, deserves no indulgence of this Bench. The reasons as to how, respondents are liable for payment of compensation on the ground of disbursal of loan by PNB in terms of TPA executed and signed by complainant, have not been specified. Further, the alleged allegations made by complainant in the present complaint, were also raised by him before the Hon'ble Authority in GC No.0135 of 2022 by way of rejoinder and written arguments. However, Hon'ble Authority finding no merits in the said vague and frivolous submissions of the complainant, did not even deem it necessary to give findings in its judgment dated 06.05.2024. That complainant did not even annex said rejoinder and written arguments filed by him before the Authority in GC No.0135 of 2022, with the present complaint, for the reasons best known to him. Copies of said rejoinder dated 01.04.2023 and written arguments dated 18.04.2024 are placed on record by the answering respondents. That complaint filed by complainant is abuse and misuse of process of the law. Denying rest of the averments of the complaint and allegations of the complainant, a prayer has been made for dismissal of the complaint.



4. Rejoinder to the written reply was filed by complainant, controverting the contents of written reply of respondents and reiterating the contents of his complaint.

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

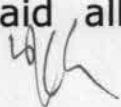
6. I have heard the complainant and representative of the respondents, who addressed arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the entire record of this case, including written arguments with their able assistance.

Keeping in view the pleadings of the parties, their submissions, coupled with the documents placed on record by them, it is their admitted case that the apartment in question, was booked by the complainant. Total sale consideration, allotment letter, builder buyer's agreement dated 23.11.2015, date of delivery of possession i.e 23.05.2019, as detailed in Para No.2 of this order, are also admitted by the parties. It is further admitted by them that possession of the said apartment was not delivered to the complainant as per terms and conditions of the agreement. Complainant had moved to the Hon'ble Authority (RERA)



through his complaint (Complaint GC No.0135/2022, Decided on 06.05.2024) seeking relief of refund of the deposited amount alongwith interest, pertaining to the said apartment, under Section 18 (1) of the Act. Said complaint was decided by the Hon'ble Authority in favour of the complainant vide order 06.05.2024. Copy of this order is available on the record of this case and the same is also not disputed by the parties. There is nothing on record to suggest that the said order has been challenged by any of the parties or the same has been set aside by the competent authority. So meaning thereby, the said order passed by the Hon'ble Authority has become final and both parties, are bound by it's findings. Perusal of this order shows that the same has been passed after affording sufficient opportunities of being heard to the parties and also to lead evidence by them. They were heard on the merits of the case and in their presence said order was pronounced by the Authority.

As per above said order dated 06.05.2024 passed by the Authority, respondent No.1 has been directed to pay Rs.42,31,760/- to the complainant, alongwith interest @ 18.85% p.a, as per Section 18(1) of the Act. It was specifically held in the said order that vide allotment letter dated 23.11.2015, a unit was allotted to the complainant in the project "The Lake" being promoted by respondent No.1, and as per clause 40 (a) of the said allotment letter,



respondent was liable to give possession of the unit to the complainant by 22.05.2019. But possession was not delivered accordingly. So by holding respondent No.1 M/s Omaxe Chandigarh Extension Development Private Limited responsible for it, relief of refund alongwith interest as stated in earlier part of the order, was granted to the complainant. Pleas of the respondents were not accepted by the Authority while passing the said order. Keeping in view all these facts and circumstances, coupled with pleadings, their submissions and documents of the parties, it stands proved on record that respondent No.1 has failed to deliver possession of the apartment in question, to the complainant, as per terms and conditions of the agreement, so this delay is attributed to the respondent No.1. Therefore, his conduct falls within the mischief of Section 18 (1) of the RERA Act, which runs 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

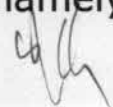
*Provided that **where an allottee does not intend to withdraw from the project**, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

The complainant therefore is entitled to compensation, as per provisions of Section 18 (1) of the Act, because of causing long delay in delivering the possession of the apartment in question, by the respondents.

7. In my considered opinion, compensation can be granted under the heads pecuniary and non-pecuniary. Though compensation has not been defined under the RERA Act; however, Section 72 of the RERA Act mentions about the factors to be taken into consideration for determination of the quantum of compensation. Section 72 of the RERA Act runs as under:

72. Factors to be taken into account

by the adjudicating officer:- while adjudicating the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely: -



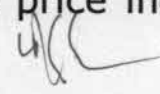
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:

(b) the amount of loss caused as a result of the default:

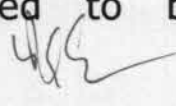
(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

8. Apart from the factors on the quantum of compensation expressed under Section 72 Sub Sections (a), (b) and (c) this Bench, under Sub Section (d) of Section 72 has been given scope of considering other factors, which are considered necessary in furtherance of justice. The Court can also take into account certain factors which are apparent in the natural course of the existing circumstances. In the case in hand, the possession of the apartment in question was to be delivered by the respondents on or before 23.05.2019, but the complainant was left in lurch by the developer, and he never offered possession to him, for a long time, as pleaded in the complaint and held by the Hon'ble Authority in its order dated 06.05.2024. During this interval, there had been substantial rise in the real estate in the area in question, in relation to developed colonies in and around the said project. Besides, the price index indicating



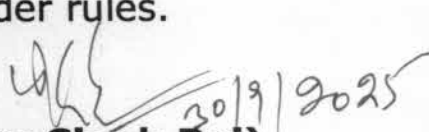
rising prices of the construction material during the said relevant period, also got manifold increased and in view of the afore narrated circumstances, it is apparent that the builder/developer in the case in hand certainly obtained unfair advantage by non-performance of his obligation in the case in hand, for a considerable period and the developer caused wrongful loss to the complainant, which is quantifiable by approximation. Apart from this, Indians are emotionally attached to own a property. They are prepared to spend major share of their lifetime earnings and also ready to obtain loans from financial institutions in the hope of getting property. Since the complainant, who himself is an Indian Army Officer has not been able to get possession of the apartment in question and had to seek the remedy under existing law and for that he had to suffer mental agony, harassment etc. and had to incur expenses for obtaining legal assistance for pursuing his rightful claim, so certainly he is entitled for compensation. Admittedly, complainant has also been granted relief of refund of his deposited amount i.e Rs.42,31,760/- alongwith interest @ 10.85% p.a by the Hon'ble Authority vide order dated 06.05.2024. While granting compensation, in the case in hand, this fact is also required to be taken into consideration.



9. Keeping in view the entire facts and circumstances narrated above and taking into account the amount paid by the complainant with regard to the purchase of the apartment in dispute and the duration for which the possession has been delayed, an amount of Rs.3,00,000/- is assessed as compensation in lump sum by approximation. Apart from this, the complainant had to pursue this litigation by spending some amount seeking legal assistance and for attending the proceedings of this case, so he is also entitled for litigation expenses to the tune of Rs.30,000/-. Accordingly, this complaint deserves to be allowed upto that extent.

10. As a result of my above discussion, this complaint stands partly allowed and disposed of. Complainant Vikrant Tyagi is held entitled to recover the total compensation to the tune of Rs.3,30,000/- i.e (Rs.3,00,000/- + Rs.30,000/-) from the respondents. Accordingly, respondents are directed to pay this amount to the complainant within 90 days from the date of this order. Copy of this order be sent to both the parties, free of cost, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:30.09.2025


(Rajinder Singh Rai)
Adjudicating Officer
RERA, Punjab