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.0143 OF 2024
Date of Institution:22.12.2024
Date of Decision:29.09.2025

Dipti Kunra, R/O House No.30, Opposite Sharma Sweets, Kochar Market, East Model Gram, Model Town, Ludhiana, Punjab Pin Code 141002.

.....Complainant

Versus

M/s Omaxe Ltd. 7, LSC, Kalkaji, New Delhi, Delhi Pin Code 110019.

.....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. Ankit Kumar Advocate, for the respondent.

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

respondent/promoter, seeking compensation and litigation expenses, on account of non delivery of possession of Flat in the project "Royal Meridian".

2. Brief facts of the complaint are that complainant on 03.04.2021, upon representation made by the respondent regarding timely delivery, booked a residential flat by paying Rs.2,00,000/- in the project i.e. "Royal Meridian". That the Project is RERA registered having RERA No. PBRERA-LDH45-PR0025. That an agreement to sell was executed between the parties on 15.12.2021 and the complainant was allotted Flat No.2002 in "TRM/TOWER-2/TWENTIETH/2002" (Annexure C-1) having carpet area of 2010 Square feet. That at the time of booking, it was promised that the possession of the apartment would be delivered on 31.12.2023. The complainant paid Rs.8,67,550/- before even signing of the Buyer Agreement. Further, all the payments made to respondent company are admitted and are reflected in the Statement of Account issued by the respondent itself on 13.11.2024 (Annexure C-2). That agreement to sell was executed between the parties on 15.12.2021, after a lapse of more than 9 months. Payment Plan opted by the complainant is "Construction linked payment plan". The total price of the apartment was Rs.1,31,09,581/- as per Schedule C-1 attached with agreement to sell. That complainant has till date paid an

amount of Rs.97,78,845/-. That more than 11 months have elapsed, but till date the respondent has failed to deliver the possession of the unit. Complainant has paid all demanded installments in time and till date has paid about 80% of the total cost. Further, facing this harassment, mental agony, complainant moved a complaint before Authority for directing the respondent to hand over the possession and also sought the interest, on the payment made, on account of delay in delivering possession. That complainant is also entitled for compensation to tune of Rs.10 Lac alongwith interest due to the harassment and mental agony being faced by the complainant as the respondent still is not able to give the possession of the flat in question and she is not able to reside peacefully and happily even inspite of spending Rs.97,78,845/- i.e. her whole life savings. That money paid by complainant has been used by the promoter for his own personal use and that is why they have not furnished any details of the account before the Authority, which they are required to maintain in terms of Section 4(I)(D). Further, not only the complainant's money, but money obtained from other buyers has also been misused by the promoter for his other projects, taking unfair advantage of payments made by complainant and other home buyers. That not only in the present project, the promoter is consistently and repetitively defaulting in many other project

in State of Punjab (Annexure C-3). That due to fault of the respondent, complainant has to engage an advocate for perusing her complaint before the Authority and thereafter again had to approach this Bench through counsel, therefore, the complainant is also entitled to litigation expenses. Hence, this complaint in which the complainant has sought compensation of Rs.10,00,000/- for causing mental agony and physical harassment and litigation expenses of Rs.1,50,000/-.

3. Respondent, put in appearance and contested this complaint, by taking preliminary objections that the instant complaint is not maintainable under Section 31 of the Act, as none of the provisions of the Act has been contravened/violated by the respondents. That the reliefs claimed by the complainant are illegal, misconceived and erroneous. That complainant had applied to the respondent for allotment of the unit and pursuant thereto, was allotted unit No.TRM/Tower-2/ Twentieth/2002, having carpet area 2010 square feet, in the residential project, namely, "The Royal Meridian", situated at Pakhowal Road, Ludhiana. Further, it is averred that complainant has filed the present complaint primarily on the ground of delay in handing over the possession of the unit in question. That complainant has tried to mislead this Authority. It is averred that the Authority has already extended the period of completion of

the project upto 31.12.2025. Thus, in view of above said fact, there is no delay to hand over the possession and the present complaint is pre-mature and as such, is liable to be dismissed and complainant is not entitled to any compensation on account of delay in handing over the possession. That as per Section 4(1) of the Act, a promoter is required to file an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. Further, in terms of Section 4(2) of the Act, inter alia, the promoter shall enclose the documents alongwith the application, as mentioned in the Sub Section 4(2) (1) (C) of the Act, inter alia provides that declaration supported by an affidavit is to be given by the promoter stating the time period within which he would undertake to complete the project or phase thereof as the case may be. Further, Section 19(3) of the Act provides that allottee shall be entitled to claim possession of the plot or building as per declaration given by the promoter under section 4(2) (1) (C). Thus, it could not be said that there is delay in handing over possession and possession was to be handed over on 31.12.2023. That in this case, date for completion of project has been mentioned as 31.12.2025 by the Authority itself as per Extension Certificate. Moreover, due to outbreak of pandemic COVID-19, the Government has extended the

period of all real estate projects by 6 months. Thus, it could not be said that there has been delay in handing over the possession. Copy of Extension Certificate is Annexure R-1. Further, it is averred that clause 33 of the Agreement clearly mentions that if there will be some dispute between the parties then the same shall be settled amicably by mutual discussion, failing which dispute shall be settled through Adjudicating Officer appointed under the Act. That not even a single document /letter has been attached with the complaint to substantiate that complainant has ever raised any such issue and the complainant did not approach the respondent company to settle the matter. That the dispute ought to be referred to the Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 [as amended vide the Arbitration & Conciliation (Amendment) Act, 2015] and as such, this Bench does not have jurisdiction to entertain the present complaint. That the Authority does not have territorial jurisdiction to entertain the matter, as clause 33 of the agreement clearly states that Courts at Ludhiana shall have jurisdiction in all the matters in connection with the allotment. Further, it is averred that in view of the settled law in a plethora of decisions of the Hon'ble Supreme Court of India, whereby it has been categorically laid down that agreed clauses of contract are binding on the parties and the Courts shall not interfere with the terms and conditions

agreed to between the parties. That complaint filed by complainant is premature and is not liable to be entertained in the eyes of law. Further, still substantial amount is pending to be paid by the complainant. Moreover, as per the Act, Section 19(6) clearly mentions that every allottee shall be responsible to make necessary payments within the time specified in the agreement and possession is also subject to timely payment. That no cause of action has arisen in favour of the complainant to file the present complaint being pre mature, the same is liable to be dismissed. That complaint filed by complainant before this Bench is misconceived, erroneous and is untenable in the eyes of law. Complainant has filed present complaint primarily on the ground of delay in handing over possession of the unit in question. That RERA Authority has already extended the period of completion of the project in question upto 31.12.2025. Thus, in view of the said fact, there is no delay in handing over the possession and present complaint is pre-mature and is liable to be dismissed. 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, he reiterated the contents of the complaint and denied those of the reply filed by the respondent, at every stage of the proceedings in this case.

5. Violations and contraventions contained in the complaint were put to the representative of the respondent, to which he denied and did not accept the allegations. Then the complaint was proceeded for further enquiry.

6. I have heard learned authorized representatives of the respective parties and have gone through the record of this case carefully, with their able assistance. Each party argued his case on the lines of his pleadings, as detailed in earlier part of this order.

Admittedly, the flat in question, was got booked by the complainant with the respondent and agreement in this regard was executed on 15.12.2021. Its sale price was settled as Rs.1,31,09,581/-, out of which the complainant has paid amount of Rs.97,78,845/-, as mentioned in Para No.2 of this order and pleadings of the complainant. Since possession of the flat has not been delivered to her in time, as per settlement between the parties, so she has preferred the present complaint seeking compensation and litigation expenses. On the other hand, learned representative of the respondent argued that huge amount is still due towards the complainant, from the sale consideration. That the RERA Authority vide extension certificate has extended date for completion of the project in question as 31.12.2025, so this complaint deserves dismissal being premature. It was further argued that it is admitted case of the complainant

that she has availed the remedy of claiming interest on the paid amount for the delayed period for possession, before the RERA Authority, so as per Section 18 (1) of the Act, she is not entitled for any compensation or litigation expenses.

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*
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> *"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, as is clear from her pleadings. 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. This remedy has already been availed by the complainant. 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. Accordingly, no case is made out in her favour for granting any relief to her. So, 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

29/9/2025

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