

**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.0068 OF 2023

Date of Institution:26.08.2023

Date of Decision:26.02.2026

1. Ashok Kumar.
2. Jasvinder Kumar, Both R/O House No.351, IAS-PCS Society, New Chandigarh, Mullanpur, SAS Nagar (Mohali) Punjab Pin Code 140901.

.....Complainants.

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade Tower, Ist Floor, New Chandigarh, Mullanpur, SAS Nagar (Mohali), Punjab Pin Code 140901.

.....Respondent.

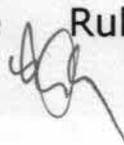
Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Mr. Manpreet Singh Longia Advocate, for the complainants.

Mr. Arjun Sharma Advocate, for the respondent.

ORDER

Present complaint has been filed by the complainants, 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 alongwith litigation expenses.

2. As per case of the complainants, they booked an apartment by making payment of Rs.5 lacs to respondent, on 01.11.2014 in project namely "THE LAKE", copy of payment receipt is Annexure C-1. The respondent allotted unit No.TLC/EMERALD-C/ELEVENTH/1103 to them. Total sale price was Rs.93,11,550/-. The allotment letter was issued on 21.03.2015, copy of which is Annexure (C-2) having detailed terms and conditions. Physical possession of the flat was to be offered within 42 months i.e. on 21.09.2018. Complainants have already paid an amount of Rs.76,30,207.94/-. Further, complainants had availed loan from SBI, which has been cleared. However, till date, neither the project is complete nor any date has been given by the respondent for handing over the possession. The complainants are suffering mentally and financially due to malpractices of the respondent-company. Complainants also approached the respondent to get copy of approved drawings, but to no use. So, complainants have prayed that respondent be directed to produce approved drawings alongwith detailed calculations for Super area allotted to them. It is further submitted that project in question was advertised to be developed around a big water body/LAKE, however, respondent has changed plans and no big water

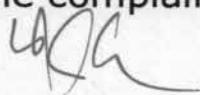


body is existing. Further, respondent-company has violated provisions of Section 18 of the Act by not handing over possession of the unit in question within time prescribed. As the complainants do not wish to withdraw from the project, so respondent is bound to offer possession and is also liable to pay interest for delay for each month beyond period agreed, for which the complainants have already filed GC No.518 of 2022 before the Hon'ble Authority. The complainants have sought compensation of 10 Lac due to the harassment and mental agony being faced by them as the respondent still is not offering possession of the flat, resultantly complainants are not able to reside peacefully and happily, inspite of spending Rs.76,30,207.94/-, almost their whole life savings. Money has been used by the promoter for his own personal use and that is why respondent has not furnished any details of the account before the Hon'ble Authority, which respondent was required to maintain in terms of Section 4(i)(D). Money obtained from complainants and other apartment buyers, has also been siphoned off and has been used by the promoter for his other projects, taking unfair advantage of payments. More over the present project i.e 'The Lake' has been constructed by obstructing the natural flow of the Siswan Choe, for which the Hon'ble NGT has already taken cognizance, copy of order is Annexure (C-8). copy of

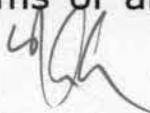


Newspaper cutting is Annexure (C-9). Promoter by throwing all rules to the wind has started constructing the project on unauthorized land by blocking river bed, which is also a very relevant factor for grant of compensation. Hence, this complaint, through which complainants have sought compensation of Rs.10 lacs and litigation expenses of Rs.2,20,000/-.

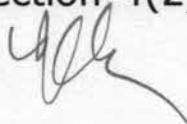
3. Respondent appeared, filed reply taking preliminary objections that M/s Omaxe Chandigarh Developers Pvt,. Ltd (formerly known as M/s Omaxe Chandigarh Extension Developers Pvt,. Ltd.) i.e the respondent is a company duly incorporated under the provisions of the Companies Act, 1956. That Mr. Vishal Chawla, is well conversant with the facts of the present case and he has been duly authorized by respondent-company through resolution dated 01.04.2023, copy of which is Annexure R-2, to pursue this case. It is further averred that the averments and contentions raised by complainants may not be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts. The complaint filed by complainants, besides being misconceived and erroneous, is untenable in the eyes of law as they have tried to mislead this Bench by making incorrect, false averments and incomplete facts. The complainants have also



filed one more complaint against the respondent before Hon'ble Authority bearing GC No.518 of 2022 seeking possession of unit alongwith interest on the payment made on account of delay in delivering the possession and as such, they are not entitled to seek compensation under the Act. In this regard, respondent has made reference of Section 18 of the Act, which is not reproduced for the sake of brevity. It is submitted that in view of clause 40(g) of the agreement, the development period/construction period is 48 months i.e (42 + 6 months extended grace period). The perusal of above clause reveals that it had been agreed between the parties that in case of any default/delay in payment as per the schedule of payments as provided in the Allotment Letter, the date of handing over possession shall be extended accordingly. In the event of failure of the respondent-company to hand over possession by due time, clause 40(g) will be enforced and in view thereof, it is liable to make compensation of Rs.5/- per square feet, per month, for the entire delayed period. Both the parties are bound by the clause of agreement and respondent-company is ready to make payment of compensation to the complainants and thus, no cause of action has arisen in favour of complainants to file the present complaint and same is liable to be dismissed. It has further been agreed between the parties that the possession of unit in terms of above clause 40(g)



shall be subject to timely payment of installments by the allottee and in case there is delay in handing over possession on account of delay in making payments, the respondent-company shall be entitled to reasonable extension of time for the delivery of possession of the said unit. It is further averred that in view of settled law in a plethora of decisions of the Hon'ble Supreme Court of India, whereby it has been categorically laid down that the agreed clauses of contract are binding on the parties and Courts shall not interfere with the terms and conditions agreed to between the parties. That as per payment plan opted by complainants, they have not fulfilled their obligations and have not paid due installments on time. Resultantly, respondent had to suffer immense loss on account of delayed payments made by the complainants. Further, even as per Section 19(6) of the Act, every allottee is responsible to make necessary payments in the manner and within the time specified in the agreement and the possession is also subject to timely payment. In pursuance of the Act and Rules, 2017, upon submission of all required documents by the respondent-company, the project in question was duly registered by RERA vide Registration No.PBRERA-SAS80-PR0040. That in terms of Section 4(2) of the Act inter alia, the promoter shall enclose all documents alongwith the application as mentioned in sub section 4(2) (1) (C) of the



Act, provides that a 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. Thus, it cannot be said that there is delay in handing over the possession and that the possession was to be handed over by 11th March 2019. In the present case, the date of completion of the project had been extended to 31.12.2023 by the Authority itself, therefore, it would be wrong to allege that the possession has been delayed. Copy of extension letter dated 24.04.2023 is Annexure R-3. There is an arbitration clause in the Allotment Letter, whereby all or any dispute arising out of terms of the same is to be settled amicably, failing of which, the same was to be settled through arbitration. Complainants have claimed interest on the total amount of Rs.76,30,2017.94/-, whereas the total amount paid by them to respondent-company is Rs.71,79,122.08/- and the said facts are clear from account statement, copy of which is Annexure C-3. Further, complainants have made baseless allegations against the respondent with an ulterior motive to amend/modify the concluded agreement duly executed between the parties to involve jurisdiction of the Hon'ble Authority. It is trite that the Authority cannot adjudicate upon the prima facie prayers for modification of the clause of the agreement. Therefore, this Bench does not have the



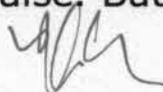
jurisdiction to consider the present complaint. The present complaint is an abuse and misuse of process of law and is liable to be dismissed. Lastly, denying entire claim of the complainants, a prayer has been made for dismissal of this complaint, with costs.

4. No rejoinder was filed, but the complainants, verbally reiterated the contents of their complaint and denied those of the reply, filed by the respondent.

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

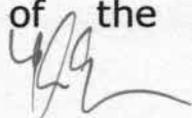
6. I have heard the representatives of the parties, who addressed the arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

Admitted facts need not to prove. It is admitted by the parties that residential flat in question, was booked by the complainants in the project of the respondent. Letter of allotment was issued on 21.03.2015 in this regard, having detailed terms and conditions. It is further case of the complainants that possession of the flat was to be given 42 months i.e 21.09.2018. Complainants have alleged that they have deposited Rs.76,30,207.94 paise. But neither project is



complete nor possession has been handed over to them by respondent, within the prescribed time. That respondent has changed the approved site plan. Complainants have also filed another Complaint i.e GC No.518 of 2022 before the Hon'ble Authority, which has been disposed of by the Hon'ble Authority vide order dated 03.06.2024 and the complainants have been allowed interest of the deposited amount for the period of delay in handing over possession of the flat. Lastly, a prayer has been made to allow this complaint, as per its prayer.

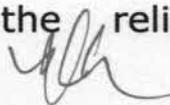
On the other hand, Ld. Representative for the respondent has vehemently opposed the submissions of Ld. Representative for the complainants, and submitted that this complaint is totally misconceived, erroneous and untenable in the eyes of law. That material facts have been concealed by the complainants from this Bench. There was no delay on the part of the respondent, as alleged in the complaint, nor any term or condition settled between the parties, has been violated by the respondent. That period for handing over the possession was extended and the complainants have failed to pay due installments on time. That this Bench has no jurisdiction to entertain the present complaint. It is further submitted that when the complainants have availed the remedy of interest for the delayed period, then the present complaint under Section 18 of the Act, seeking



compensation etc. on the ground of delay does not lie. After denying the entire claim of the complainants and reiterating his stand, learned representative of the respondent prayed for dismissal of this complaint with costs.

7. I have paid considerable thought to the pleadings, documents, submissions of the parties and have also perused the entire record of this case, with their able assistance.

Admittedly, another complaint i.e GC No.518 of 2022 was moved by these complainants before the Hon'ble Authority (RERA), which was disposed vide order dated 03.06.2024. In this complaint, the complainants had prayed to issue directions to the respondent to hand over possession of the residential apartment in dispute to them, after obtaining occupancy and completion certificate from the competent authority. They had also sought relief of interest for the period of delay in handing over possession of the said apartment to them. This complaint was allowed vide order dated 03.06.2024 and relief of interest etc. was granted to the complainants. Meaning thereby, the complainants have not withdrawn from the project of the respondent. Above said order dated 03.06.2024 of the Hon'ble Authority has become final, so both parties are bound by the said order. Keeping in view all these facts and circumstances, coupled with the reliefs sought by



complainants in the present case and for proper, effective disposal of this case, perusal of Section 18 of the Act is necessary, 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,--

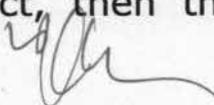
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(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*

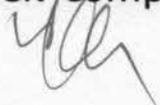
*Provided that where an **allottee does not intend to withdraw from the project**, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

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.

8. Now coming to the case in hand, admittedly, the complainants have not withdrawn from the project, rather, they have already availed the remedy of claiming interest on the paid amount for the delayed period, before the Hon'ble Authority, as is clear from copy of order dated 03.06.2024, passed by the Hon'ble Authority (RERA) in their favour. Copy of this order is available on the record of this complaint and this order has not been set aside by any competent authority, till date. 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, Refund Amount, lies with the Hon'ble Regulatory Authority (RERA), whereas remedy qua compensation lies with this Bench. In the case in hand, admittedly, the complainants have chosen to continue with the project, so they are 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. Admittedly, this remedy has already been availed by the complainants, from the Hon'ble Authority of RERA through order dated 03.06.2024 passed in (GC No.0518 of 2022). Keeping in view all these facts and circumstances, coupled with Section 18 of the Act, since the complainants have not withdrawn from the project and they have already availed the relief of interest on the amount paid, for delayed period, so they are not entitled for any relief claimed through this complaint. Accordingly, this complaint deserves dismissal.

9. 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:26.02.2026


(Rajinder Singh Rai) 26/2/2026
Adjudicating Officer,
RERA, Punjab.