

**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.0015 OF 2024
Date of Institution:17.01.2024
Date of Decision:26.02.2026

1. Kavita Marwah.
 2. Davinder Marwah, Both R/O House No.1096, Sector 37-B, Chandigarh, Pin Code 160037.
-Complainants.

Versus

Omaxe Chandigarh Extension Development Pvt. Ltd.
Corporate Office 10LSC, Kalkaji, Central Delhi, Pin Code
110019.

.....Respondent

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

Present: Mr. Eklavya Gupta Advocate, for the complainants.
Mr. Ashim Aggarwal Advocate, for the respondent.

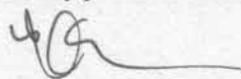
ORDER

The present complaint has been filed by complainants under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondent/promoter, seeking compensation in the form of interest for delayed period on the amount deposited by them i.e Rs.75,07,263/-, compensation on account of rent paid by them to the tune of Rs.24,30,000/-, compensation of Rs.5,00,000/- towards

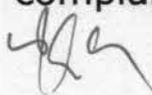


mental agony and harassment and Rs.1,50,000/- towards litigation expenses.

2. Brief facts of the complaint are that complainants are aggrieved persons due to the unfair trade practice and deficiency in services committed by respondent and also violating various provisions of the Act. That the project of respondent is registered bearing No.PBRERA-SAS80-PR0040. At the time of making payment to book a Residential Flat No.TLC/Emerald-C/ELEVENTH/1104 having Super Area/Carpet Area measuring Approximately 2300 square feet/213.68 Square Meters in the residential Project namely "THE LAKE", situated at OMAXE New Chandigarh, the respondent represented of having all sufficient approvals, clear ownership as per master plan and that it was an approachable project to live with fully developed infrastructure. That all the payments were made to the promoter in time as per the Buyer's Agreement. As per said dated 30.07.2015, the total sale price of the unit was Rs.90,63,725/- excluding GST. The complainants had paid more than 85% of the total cost amounting to Rs.75,07,263/- of the unit till date as per the agreed payment plan. That as and when demand was raised by the respondents, complainants had paid the due amount. Copy of the statement of account is Annexure C-1. Receipts of the payment are Annexure C-2 (Colly). That as per Article 7

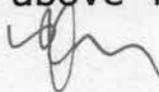


(7.1) of the Buyer's Agreement, possession of the unit was to be delivered by the respondent on or before 30.07.2019 from the date of execution of the Buyer's Agreement. The respondent-company did not offer possession till date and the project is not complete. That the interest for delayed possession has also not been paid by the promoter till date and he is trying to delay the same on one pretext or the other. Copy of the Allotment Letter/Buyer's Agreement is Annexure C-3. However, the actual legal possession of the unit has not been delivered till date i.e after obtaining Occupation Certificate/Completion Certificate which have not been obtained till date. The complainants have visited and contacted the answering respondent repeatedly to get actual legal possession of the unit in question. That even after delay of more than 4 Years, possession of the Unit is still not handed over to the complainants. The complainants are senior citizens and are living on a rented accommodation since 2018 hoping to get possession of the unit by 2019. The respondent-company has neither paid any compensation nor any interest for the delayed period till date. That the complainants have suffered at the hands of the respondent on account of acts of omission and commission. That respondent has violated section 11,13,18 & 19 of the Act. Hence, complainants have sought

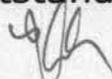


compensation, interest, litigation expenses etc., through this complaint.

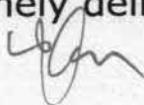
3. Upon service, respondent put in appearance and contested this complaint, by taking preliminary objections that the respondent is a company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at 10, Local Shopping Centre, Kalkaji, New Delhi. The name of "Omaxe Chandigarh Extension Developers Pvt. Ltd" has been changed to Omaxe New Chandigarh Developers Pvt. Ltd", copy of certificate of incorporation is Annexure R-2. The allegations and averments made by the complainants are denied being false and without any basis. There is no cause of action accrued in favour of complainants to invoke jurisdiction of this Bench. That this Bench has no jurisdiction to entertain the present complaint, as there is mention of clause No.61 in the allotment letter that all disputes shall be settled amicably by mutual discussion, failing which same shall be settled through Arbitration, which shall be governed by the provisions of Arbitration and Conciliation Act, 1996. The complainants have concealed material facts with regard to the pendency of Complaint before the Hon'ble Authority bearing (GC No.0446/2023) seeking possession of the unit and interest on the amount paid by them. Since complainants have also filed above mentioned complaint



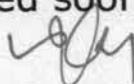
before the Hon'ble Authority, so the present complaint seeking compensation is not maintainable. Complainants have failed to prove actual loss or injury suffered by them on account of delay in possession. The complainants on their own volition approached the respondent and purchased the residential flat after being satisfied with the terms and conditions explained to them at the time of booking. They also signed the Allotment Letter, wherein it was confirmed by complainants that they were fully satisfied about the terms and conditions, price and nature of rights, title, interest of the company, so there is no unfair trade practice or deficiency in service on the part of the respondent-company. That respondent-company has not violated any provision of the Act and the project in question is RERA registered having Registration No.PBRERA-SAS80-PR0040. The total cost of the unit is reflected in Annexure A of Allotment Letter dated 30.07.2015 and payment of Rs.75,07,263/- made by complainants is matter of record. It is alleged that on various occasions, complainants had defaulted in making timely payments as per the payment plan and numerous reminders were sent by respondent-company to them. That due to such defaults, the allotment of the said unit/flat was cancelled on 03.04.2017 as even after numerous reminders to make payments, complainants failed to respond or remit the outstanding dues. However, as



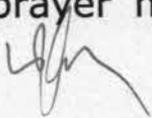
a goodwill gesture by the respondent-company, the allotment was continued after the complainants made partial payments to show bonafide. However, interest on delayed payments was levied and even subsequently, complainants have defaulted in making timely payments and as on 06.03.2014 the interest outstanding for delayed payment is Rs.6,19,317.10/-, copy of calculation sheet is Annexure R-3. Copy of reminders for making payment dated 05.06.2016, 14.02.2017 and 23.03.2017 is Annexure R-4. That consequent to reminder dated 23.03.2017, respondent-company constrained to cancel the allotment of the unit as complainants did not make the outstanding payment vide cancellation letter dated 03.04.2017, copy of which is Annexure R-5. Thereafter the complainants made payment amounting to Rs.10,00,000/-, out of which Rs,8,58,000/- was towards outstanding part payment alongwith interest of Rs.1,42,000/- vide receipts No.1435998 and 1435978, copy of which is Annexure R-6. On being assured by the complainants to make timely payments in future, respondent-company decided to continue with the allotment and carry forward with the existing payment plan, but thereafter, complainants again defaulted on various installments and reminders were sent on repeated occasions to them. Copy of some of the reminders sent on different dates is Annexure R-7. Further, timely delivery of possession



on or before 30.07.2019 was subject to timely payments by complainants, but till date they have not made complete payment alongwith interest to the respondent-company and as such, no claim for compensation can lie against the respondent for delay in handing over possession. The respondent is entitled to reasonable extension of time due to such default of the complainants as has been set out in clause 40 (a) of the allotment letter. The allotment letter was signed on 30.07.2015 and the possession was to be delivered on or before 30.07.2019. It is inter alia stated therein that the respondent shall try to complete the construction of the unit/project within 42 months from the date of signing of the allotment letter by the allottee(s) or approval of the building plans, whichever is later and within such extended grace period of 6 months. The completion of development work of unit within such 48 months is subject to force majeure conditions as mentioned in clause 40(a) and subject to timely payment by the allottee(s) or subject to any other reasons beyond the control of the opposite party. The physical possession was to be handed over on or before 30.07.2019, subject to force majeure conditions and the allottee making timely payment. The demands have been raised as per the construction linked payment plan and the internal plaster has been completed and possession of the unit is expected to be delivered soon. That possession of



units has already been started in some of the towers in the same project for which occupation certificate has been obtained and many allottees have taken possession. Occupation Certificate of few such towers located in the same project is Annexure R-8. The delay in completion of the unit allotted to the complainants has been caused due to the own defaults of complainants in not making timely payments and also due to force majeure circumstances arising from the COVID pandemic. The RERA Punjab had granted extension to the respondent in view of Force Majeure and extended the time. The letter granting extension clearly inter alias states that the validity of the above said project was upto 31.07.2021 and was further extended automatically for six months due to COVID-19 upto 31.01.2022 (as per circular dated 28.10.2020 of this Authority), which was further extended for one year under Section 6 of the Act upto 31.12.2022 vide letter dated 07.02.2022. The limitation period of the Mega Project was extended by the competent authority i.e PUDA upto 31.12.2023, copy of which is Annexure R-9. That respondent is not liable for the alleged rent paid by the complainants and no rent agreement or receipts have been placed on record to prove such payments. Denying rest of the averments of the complaint, a prayer has been made for dismissal of the complaint.

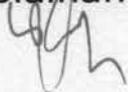


4. Rejoinder to the written reply was filed by the complainants, reiterating the contents of their complaint and denying those of the reply filed by the respondent, at every stage of the proceedings in this case.

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.

Admitted facts need not to prove. It is admitted by the parties that residential flat was booked by the complainants in the project of the respondent. Buyer's Agreement dated 30.07.2015, as detailed in Para No.2 of this order, is also admitted. Ld. Counsel for complainants further argued that even after the lapse of 4 years, possession of the flat has still not been handed over to them. It is stand of the respondent that the complainants have failed to deposit the due amounts, as per terms and conditions settled between the parties and as such, the allotment of the said flat was cancelled, as stated in written reply of the respondent. Both complainants had also filed



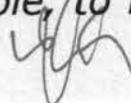
complaint against the respondent pertaining to the flat in dispute, before the Hon'ble Authority (RERA), titled as **Kavita Marwah etc. Vs. M/s Omaxe Chandigarh Extension (GC No.0446 of 2023)** seeking interest on the paid amount for the delayed period under Section 18 of the Act. This complaint has been allowed and disposed of vide order dated 07.01.2026 by the Hon'ble Authority. Copy of this order is available on the record of the complaint in hand and the same is not disputed. Parties are bound by the findings contained in the said order dated 07.01.2026. Meaning thereby, complainants have not withdrawn from the project of the respondent. Ld. Representative for the respondent prayed that this complaint is not maintainable under Section 18(1) of the Act. Keeping in view the reliefs sought by complainants in the present case coupled with pleadings, documents and submissions of the parties 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*

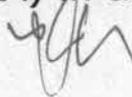


*received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation** in the manner as provided under this Act*

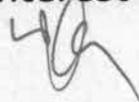
*Provided that where an **allottee does not intend to withdraw from the project**, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.*

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.

7. 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 07.01.2026, 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 become final. 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 07.01.2026 passed in (GC No.0446 of 2023). 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.

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:26.02.2026


(Rajinder Singh Rai)
Adjudicating Officer
RERA, Punjab