

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER,  
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No.0471 of 2022  
Date of Institution :24.09.2022  
Date of Decision: 10.12.2024

Gurbachan Singh through his legal heir Shri Harsimrat Singh,  
resident of Village Surajpur, Greater Noida, District Gautam Budha  
Nagar, Uttar Pradesh-201306.

....Complainant

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. 7, Local  
Shopping Centre, Kalkaji, Delhi - 110019

....Respondent

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

Present: Shri Mohd. Sartaj Khan, Advocate, for the complainant  
Shri Arjun Sharma, Advocate for the respondent

**ORDER**

The instant complaint has been instituted by the complainant in his individual capacity on 01.12.2022 under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017), against the respondent M/s Omaxe Chandigarh Extension Developers Pvt. Ltd., for issuance of a direction to the respondent to pay interest for the period of delay in handing over possession from 01.08.2021 till the date of handing over of possession after obtaining Occupancy Certificate/Completion Certificate from the Competent Authority on

the amount of Rs.2,06,69,709/- paid to the respondent by the complainant for purchase of Flat No.TLC/ISABELLA-A/12th Floor/1201, having Super/Carpet Area of 4850 Sq. Ft./ 3319 Sq. Ft. in its project "The Lake" (Registration Number PBRERA-SAS80-PR0040) being developed by the respondent at village Bharounjian in Mullanpur (LPA), District SAS Nagar, Mohali. It is the further prayer of the complainant that respondent be directed to pay Rs.1,50,000/- as litigation charges in the interest of the justice.

2. It is averred in the complaint that Sh. Harsimrat Singh, is the son and legal heir of Sh.Gurbachan Singh, the original allottee and the learned Counsel for the complainant has attached a copy of the registered Will dated 01.03.2019 and death certificate dated 12.08.2021 as Annexure C-1 and Annexure C-2 with his complaint.

2.1 It is alleged by the complainant that at the time of booking of Flat No. TLC/ISABELLA-A/12th Floor/ 1201, having Super/Carpet Area of 4850 Sq. Ft./ 3319 Sq. Ft. in the project named "The Lake", situated at OMAXE New Chandigarh, the respondent stated that they have all the necessary approvals from the concerned Authority, clear ownership as per master plan and approachable project to live with fully developed infrastructure.

2.2 The booking of the Flat was made on 23.04.2019 by making the payment of Rs.2,85,714/- against the basic sale price of Rs.2,21,27,312/-. It is further mentioned in the complaint that the flat has been transferred in the name of Sh. Harsimrat Singh (son and LR of the original allottee) on the basis of Registered Will in their records

by the respondent/promoter. It is further contended in the complaint that the complainant has paid 95% of the price i.e. Rs.2,06,69,709/- till date and also paid Rs.10,33,485/- as GST. The learned Counsel for the complainant has attached a copy of the Statement of Account as Annexure C-3 with the complaint. It is also contended that as per Clause 7.1 of the Agreement for Sale dated 09.08.2019, annexed as Annexure C-4 the possession of the flat was to be handed over to the complainant on or before 31.07.2021 and further as per Clause 7.6 in the event of failure in delivery of possession the respondent/promoter shall compensate/ pay interest for the period of delay.

2.3 It is further the case of the complainant that till date neither the possession of the flat has been handed over to him nor any interest for the period of delay has been paid by the respondent. Only 5% of the sale consideration is yet to be paid by the complainant that too at the time of delivery of possession of the flat. The learned Counsel for the complainant has attached a copy of the Agreement for Sale as Annexure C-4. It is further the case of the complainant that the respondent has not obtained Occupancy Certificate/Completion Certificate from the concerned Authorities.

2.4 It is stated by the complainant that the respondent has violated Sections 7, 11, 12, 18 and 19 of the Act of 2016. It is also averred by the complainant that the respondent

is charging huge Interest for the delay in making payments by the complainant and contended that the project is nowhere near Completion and is not likely to be offered for possession of the Flat. Hence, this complaint seeking interest for the period of delay in handing over possession to the complainant along with litigation expenses.

3. Upon notice, respondent/promoter appeared through learned Counsel and submitted his reply taking the preliminary objections to the effect that the respondent denied each and every statement, submissions and contentions mentioned in the complaint being contrary and inconsistent with the facts of the case. It is contended that the reliefs sought/ claimed by the complainant cannot be said to even fall within the jurisdiction of this Authority. The learned Counsel for the respondent has submitted the brief details of the flat allotted Flat No. TLC/ISABELLA-A/ TWELFTH/ 1201, having a super area of 4850.00 sq. ft. in the residential project 'The Lake' situated at Omaxe New Chandigarh, Mullanpur, SAS Nagar, Punjab. The respondent got the project registered with the Real Estate Regulatory Authority, Punjab, on 06.09.2017 vide registration no. PBRERA-SAS80-PR0040. Thereafter, vide registered Agreement for Sale dated 9<sup>th</sup> August, 2019, the respondent sold the flat to the complainant for a total price of Rs.2,21,27,312/- excluding GST. Learned Counsel for the respondent has produced Clause 7.1 of the above said Agreement which reads as under:

**"7.1 - Schedule for possession of the said Unit-** The Promoter agrees and understands that timely delivery of possession of the Said Unit is the essence of the Agreement. The Promoter, based

on the approved plans and specifications, **assures to hand over possession of the Said Unit on 31<sup>st</sup> July, 2021, unless there is delay or failure due to war, flood, draught, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure")**. If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Said Unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within ninety days from the date of termination of allotment. After refund of the money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement.'

- 3.1. It is further the case of the respondent that before the date of handing over the unit in question on 31<sup>st</sup> July, 2021, lockdown was imposed in the entire country on 22<sup>nd</sup> March, 2020, due to the pandemic of Covid-19 and, as such, the work at the said project was completely stopped. Further, the Government of India realizing the difficulties being faced by the real estate sector, due to the reverse migration of labourers to their native places and break in supply chain of construction material, issued an advisory dated 13.05.2020, by invoking the provision of 'Force Majeure' and also the Ministry of Housing & Urban Affairs, Government of India issued the following directions to Real Estate Regulatory Authorities:-

*"(i) Regulatory Authorities may issue suitable orders/ directions to extend the registration and completion date or revised completion date or extended completion date automatically by 6 months due to outbreak of COVID-19 (Corona Virus), which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking force majeure clause;*

*(ii) Regulatory Authorities may, on their own discretion, consider to further extend the date of completion as per registration for another period upto 3 months, if the situation in their respective State or any part thereof, for reasons to be recorded in writing, needs special consideration of invoking 'force majeure' in view of current pandemic;*

*(iii) Regulatory Authorities may issue fresh 'Project Registration Certificates' with revised timeline in each such registered real estate project at the earliest; and*

*(iv) Regulatory Authorities may extend concurrently the timelines of all statutory compliances in accordance with the provisions of RERA and the rules and regulations made thereunder."*

3.1.1 It is further the case of the respondent that pursuant to the afore-mentioned advisory, this Authority issued an order on 28.10.2020 (Circular No.RERA/ENF-2020/23 dated 28.10.2020), whereby vide clause 4 (d) of the said order/Circular, this Authority extended the time limit for all statutory compliances in relation to real estate projects which had become due between 15<sup>th</sup> March, 2020 and 15<sup>th</sup> September 2020, by six months from the original date, which was extendable upto further 3 months i.e. in total 9 months and, since, as per the Allotment Letter the possession was to be given on 31<sup>st</sup> July, 2021, therefore, the said date was further extended by 9 months i.e. till 31<sup>st</sup> May, 2022. The learned Counsel for the respondent has attached copies of the advisory dated 13.05.2020 issued by the Ministry of Housing &

Urban Affairs, Government of India and order/Circular dated 28.10.2020 passed/issued by this Authority, with his reply as **Annexure R/3** and **Annexure R/4** respectively. It is further contended that since an Agreement to Sell was signed between the parties therefore, any adjudication has to be as per the aforementioned Agreement. Further, it is also mentioned in the reply that in order to complete various basic amenities in the project i.e generating and creating infrastructure, man-power, building material, installation of electrical equipment, sewerage systems, water pipelines to make living of the allottees in the project as state of pride and comfortable has spent crores of rupees.

3.2 It is further contended that the abovementioned submissions reveal that apparently, the present complaint filed by the complainant is an abuse and misuse of process of law, and as such, no relief can be granted to the complainant and complaint be dismissed.

4. It is noted that the complainant availed various opportunities since 28.03.2023 for filing rejoinder, but till today no rejoinder has been filed by learned Counsel for the complainant.

5. The hearing was halted for a considerable period due to administrative reasons which is not depicted in detail. Thereafter this matter was taken up by the undersigned on 04.09.2024 and on the request of the learned Counsel for the complainant the matter was

adjourned to 13.11.2024 for arguments and adjourned to 29.11.2024. On this date i.e 29.11.2024 the matter was heard.

6. When the matter was again taken up on 29.11.2024, learned Counsel for the complainant reiterated the contents of his complaint and stated that as per Clause 7.1 of the agreement for sale dated 09.08.2019, the possession was to be delivered on 31.07.2021. However, till today, despite making payment of Rs.2,06,69,709/- possession of the flat has not been handed over to the complainant, resultantly the complainant is entitled for payment of interest as prescribed in the Rules, 2016 from 01.08.2021 till the actual date of handing over valid possession after obtaining Occupancy/Completion Certificate. He has further argued that as per Clause 7.6 of the Agreement for Sale dated 09.08.2019, in the event of failure in delivery of possession the respondent/promoter shall pay interest for the period of delay. However, no such interest has been paid till date.

7. On the other hand, learned Counsel for the respondent while reiterating the contents of his reply added that due to lock down in the Country on account of Covid-19 pandemic from 22<sup>nd</sup> March 2020, *force majeure* comes into play. This force majeure clause may be taken into consideration while awarding the payment of interest for the period of delay.

8. The undersigned heard the arguments of both the parties on the stipulated date and also gone through the record available on this file.

9. There is no dispute regarding booking of Flat No. TLC/ISABELLA-A/12th Floor/ 1201, sale consideration of the flat to



be Rs.2,21,27,312/- excluding GST, payment of Rs.2,06,69,709/- by the complainant to the respondent, execution of agreement for sale dated 09.08.2019, as copies of this agreement has also been enclosed by the complainant with his complaint and the respondent with his reply wherein as per Clause 7.1 possession was to be delivered on 31.07.2021, Clause 7.6 also to the effect that the promoter shall pay to the allottee interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the said unit.

9.1 Perusal of Clause 7.1 of the agreement for sale dated 09.08.2019 revealed that possession of the flat was to be handed over to the complainant on 31.07.2021. Upon a query put up to the learned Counsel for the respondent "whether offer of possession has been made to the complainant or not"? the answer was in the negative. From this fact, it is established that till date possession has not been handed over to the complainant as was promised i.e on 31.07.2021.

9.2 Regarding the objection raised by the learned Counsel for the respondent about Covid-19 it is noteworthy that the Hon'ble Real Estate Appellate Tribunal, Punjab in Appeal Nos. 100 of 2021 and 104 of 2021 titled "*M/s Hero Realty Private Limited Vs. Arun Premdhar Dubey*" and "*M/s Hero Realty Private Limited Vs. Nitin Paragal*" vide its order dated 22.08.2022 has held that the benefit of a plea of '*force majeure*' on account of epidemic has

to be interpreted more beneficially. The relevant paras are reproduced below:

"9. The situation emerging from Covid epidemic was unique and unknown to humanity. It was fluid as is evidence from the response of the authorities resulting in repeated revisions and overhauling of decisions frequently. It is undeniable that the migrant labour was affected in a huge way, when reverse migration took place on a drastic scale. It is also common knowledge that this unorganized labour sector on which the realty sector depends wholly or substantially did not recover fully even when relaxations were granted by the authorities in human and vehicular movement.

10. It is for this reason, we are of the opinion that the benefit of a plea of force majeure on account of the epidemic has to be interpreted more beneficially, to take into consideration the uncertainties and vagaries of a fluctuating labour force at that point of time depriving the real estate sector driven completely by this unorganized labour segment into throes of accumulated losses, resulting from incomplete projects the next date of hearing unsold inventory.

11. Therefore, since a complete lockdown was imposed in March, 2020 and with no assigned verifiable point of total reversal in movement of labour, we are of the opinion that a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed.

12. We are oblivious to the fact that the benefit of 4 to 5 months as deduced by us is based on discretion and some amount of guess work, which is inevitable for the reasons, we have mentioned in the foregoing

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*paragraphs about the resultant situation from the spread of epidemic. Therefore, the liability fastened upon the developer under clause 8(i) shall now stand reduced by four months in calculating the period.*

*13. Therefore, the relief under clause 8(i) shall accordingly stand reduced by four months..."*

9.3 The other objection raised by the complainant that the respondent has charged huge Interest for the delay in making payments by the complainant, however, no documentary evidence has been produced by the complainant in this regard. Thus, this issue is not being considered for adjudication.

10. It is evident that there is delay of many months in handing over possession of the flat to the complainant and it is likely to get further delayed. From the pleadings of the parties it is clear that there is no dispute between the parties about the deposit of the amount of Rs.2,06,69,709/-, and date of delivery of possession as 31.07.2021. In view of above discussion, the undersigned is of the considered view that it would be manifestly unfair to the complainant to make him wait for the relief of interest as the duration for handing over possession is yet not disclosed or known at this stage. It is held that the complainant is entitled for the payment of the interest as per Section 18(1) of the Act of 2016 which reads 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) .....

**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 (emphasis supplied).**

(2) .....

(3) ...."

11. Also, in view of the order dated 22.08.2022 passed by the Hon'ble Appellate Tribunal in the matter of "*Hero Realty vs Arun Premdhar Dubey*" due to *force majeure* on account of Covid-19, interest for the period of four months be deducted from the period of payment of interest payable by the respondent to the complainant.
12. As a result of the above discussion, this complaint is accepted and the respondent is accordingly hereby directed to pay interest from 01.12.2021, instead of 01.08.2021 - the due date of handing over possession of the unit as per Clause 7.1 of the agreement for sale dated 09.08.2019 - on the amount of Rs.2,06,69,709/-, paid by the complainant to the respondent as the part of purchase consideration of Flat No.TLC/ISABELLA-A/12th Floor/1201, having Super/Carpet Area of 4850 Sq. Ft./ 3319 Sq. Ft. in its project "The Lake" (Registration Number PBRERA-SAS80-PR0040) being developed by the respondent at village Bharounjian in Mullanpur (LPA), District SAS Nagar, Mohali, at the rate of 11.10% per annum (today's highest MCLR rate of 9.10% plus 2%) as prescribed in Rule 16 of the Rules, 2017.
13. It is further ordered that in the first instance the respondent is directed to pay interest under Section 18(1) of the Act

of 2016 read with Rule 16 of Rules 2017 as per the State Bank of India's marginal cost of lending rate (as of today + 2% on the amount of Rs.2,06,69,709/-, paid by the complainant to the respondent w.e.f. 01.08.2021 excluding four months till the date of this order.

14. In the second instance, the respondent is further directed to pay interest under Section 18(1) of the Act of 2016 read with Rule 16 of Rules 2017 as per the State Bank of India's marginal cost of lending rate (as of today + 2% on the amount paid by the complainant from the date of this order till the date of delivery of legal and valid possession of the flat in question.

15. Further, the complainant is bound to pay the outstanding amount, if any, before taking the possession of the flat as per Section 19(10) of the Act of 2016 which reads as under:-

*"(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be".*

16. It is also further directed that the interest should be paid by the respondent to the complainant within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 2017 from the date of receipt of this order and submit a compliance report accordingly.

17. It may be noteworthy that in case compliance report is not submitted after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

18. As far as the claim of litigation cost of Rs.1,50,000/- is concerned, the complainant has not raised this issue during the course of arguments, hence being not adjudicated upon.

19. File be consigned to the record room after due compliance.

Announced



(Binod Kumar Singh)  
Member, RERA, Punjab

Rera, Punjab