

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

Complaint No.0377 of 2021
Date of Institution : 07.10.2021
Date of Decision: 16.07.2025

1. Sheena Aggarwal
2. Vikas Aggarwal

Both through Authorised person Shri Raj Kumar Aggarwal, resident of House No.1641, Sector 15, Panchkula, Haryana, Pin Code 134113

....Complainants

Versus

Omaxe Chandigarh Extension Developers Pvt. Ltd. SCO No.139-140, First Floor, Sector 8-C, Madhya Marg, Chandigarh, Pin Code 160009

....Respondent

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration Number: PBRERA-SAS80-PR0400)

Present: Shri Amandeep Singh, Advocate for complainants
Shri Munish Gupta, Advocate for the respondent

ORDER

The relief sought by complainants in this complaint is for issuance of direction to respondent to pay interest for the period of delay in handing over possession commencing from 07.01.2017 till the date of handing over valid possession of the Plot No.1156 (OCEP/P/38) in the project "OMAXE CHANDIGARH EXTN. V" along with all facilities.

2. The brief facts of the complaint submitted by complainants are summarized below:

- 2.1 Complainants purchased Plot No.1156 (OCEP/P/38) measuring 115 square yards in the project "OMAXE CHANDIGARH EXTN. V" for a total consideration of Rs.30,99,129/- also now known as

"Integrated Residential Township Phase 5A" and possession thereof was to be delivered on or before 2 years from the date of first deposit i.e 01.07.2017 as the first deposit of Rs.5.00 lakhs was made on 07.01.2015 **ANNEXURE C-1**. Vide letter dated 09.03.2015 **ANNEXURE C-3** respondent confirmed the booking of the complainants.

2.2 Complainants also made the following payments vide following receipts:

2.2.1 Receipt dated 24.02.2015 for Rs.86,700/- **ANNEXURE C-2**.

2.2.2 Rs.2,85,750/- paid on 14.10.2016.

2.2.3 Rs.18,88,764/- was transferred to respondent on 17.04.2017 **ANNEXURE C-4**.

2.2.4 Vide letter dated 18.01.2021 **ANNEXURE C-5** respondent demanded payment of Rs.3,48,165/-.

2.2.5 Vide letters dated 08.02.2021 **ANNEXURE C-6**, and dated 25.02.2021 **Annexure C-7** interest was charged @ 18%.

2.2.6 The balance amount of Rs.3,50,489/- was paid to respondent vide cheque on 25.02.2021.

2.2.7 The said payments and receipts were acknowledged by respondent vide its Statement dated 02.08.2021 **ANNEXURE C-8**.

2.3 Respondent despite having already taken Rs.27,50,964/- from complainants has failed to fulfill the obligations i.e not executed Agreement for sale and handed over possession.

- 2.4 Complainants are ready and willing to perform their part.
- 2.5 Respondent sent an alleged Buyers Agreement to complainants through mail around 15th of March, 2021 **ANNEXURE C-9** which shows that on the date of accepting deposits from complainants, respondent did not have a clear title of the project.
- 2.6 It is the prayer of complainants to direct respondent
- 2.6.1 To pay interest on Rs.27,50,964/- for the period of delay in handing over possession of the Plot No.1156 (OCEP/P/38) for the period commencing from 07.01.2017 till the date of handing over its legal possession along with all facilities and
- 2.6.2 To handover physical possession of said plot after executing formal agreement, and Conveyance Deed in favour of complainants.
- 2.6.3 to direct respondent to refund amount of Rs.2,345/- and Rs.548/- charged illegally as interest.
3. Upon notice, Shri Munish Gupta, Advocate appeared for respondent and filed reply dated 03.01.2023 which is summarized below:-
- 3.1 Respondent admitted that on 03.11.2018 draw of plots was held and complainants were allotted Plot No.1156 having area of 115.03 sq. yards in project "New Chandigarh Plots V" vide allotment dated 03.11.2018 (Annexure R-4)
- 3.2 Since complainants have not come forward, respondent sent various communications dated 28.07.2020; 17.09.2020; 16.10.2020; 17.11.2020; 14.04.2021; 11.06.2021 and 13.09.2021 (Annexures R-5 to Annexure R-11) for execution and registration of agreement for sale.

- 3.3 It is submitted that possession was offered to complainants vide letters dated 18.01.2021 followed by another letter dated 08.02.2021 (Annexure R-12 and Annexure R-13).
- 3.4 Respondent even sent various letters prior and after filing of complaint for registration of conveyance deed i.e letters dated 13.08.2021, 13.09.2021, 29.11.2021, 21.12.2021 and 19.02.2022 (Annexures R-14 to R-18). It is stated that complainants being NRIs could not visit India for registration of conveyance deed and even complainants have not attached any communication to show any grievance against respondent. Complainants have concealed the letters Annexure R-5 to R-10 and R-14 and R-15 from this Authority.
- 3.5 This complaint is barred by limitation as the date of possession was stated to be 07.01.2017 and this complaint was instituted on 07.10.2021 after a lapse of 4 years and 9 months.

In parawise reply to facts:

- 3.6 Respondent denied that possession was to be handed over on or before 2 years from date of first deposit. The payments made by complainants are matter of record.
- 3.7 It is the complainants who have not come forward to execute the agreement apparent from Annexures R-5 to R-11. Since complainants are NRIs they are not available in India, thus the delay is caused by them and not by respondent. Accordingly, complainants are not entitled for any relief.
4. Complainants submitted rejoinder dated 06.01.2023 denying the contents of the reply and reiterated the contents of their complaint. Complainants denied that they were informed about holding of any draw of lots at the time of booking. There is no limitation period under the Act of 2016 and it is well settled law that possession has to be handed over within a

reasonable time. There is a delay by respondent in handing over possession of plot as respondent offered possession vide their letter dated 18.01.2021 (Annexure R-12) after a gap of over 6 years as first payment of Rs.5.00 lakhs was made on 08.01.2015. Complainants reiterated that possession was to be handed over within two years from the date of first payment. It is further submitted that it is evident from email dated March 2021, enclosing agreement, that it was without Completion/Occupancy Certificate and referred clause 7.1 and 7.4 of agreement dated 02.03.2021. Complainants were assured by respondent that interest for delayed period would be given, but yet not received by complainants. Respondent has concealed the date of occupancy certificate. Complainants denied that they have delayed execution of agreement and prayed that interest be awarded for the period of delay in handing over possession and respondent be directed to hand over legal possession of the plot at the earliest.

5. The undersigned heard the arguments of both the Counsels on the stipulated date.

6. It is argued on behalf of complainants that they purchased Plot No.1156 (OCEP/P/38) measuring 115 square yards in the project "OMAXE CHANDIGARH EXTN. V" for a total consideration of Rs.30,99,129/- and possession thereof was to be delivered on or before 2 years from the date of first deposit i.e 01.07.2017. Complainants have already paid a sum of Rs.34,59,868/- till 25.02.2021 but respondent despite having received said amount had failed to execute agreement for sale and handed over possession. It is also argued that respondent sent an alleged Buyers Agreement to complainants through mail around 15th of March, 2021, mentioning therein the date of possession as 31.08.2021. It is the prayer of complainants to direct respondent to pay interest for the period of delay in handing over possession of the Plot and also to hand over its legal possession and also to refund amount

of Rs.2,345/- and Rs.548/- charged illegally as interest. In support of his case the complainants have submitted following judgements:-

- i. Kanishk Kapoor Vs ATS Estates Pvt. Ltd. (RERA, Punjab)
- ii. Fortune Infrastructure and Anr Vs Trevor D'Lima and Or. (SC)
- iii. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. and Anr Vs Anil Kanwariya (SC)
- iv. Devendra Kumar Vs State of Uttaranchal and ors (SC)
- v. Vrajesh Hirjee Vs Skyline Construction Co. (SC)

7. On the other hand, it is argued by respondent that complainants were allotted Plot No.1156 having area of 115.03 sq. yards in project "New Chandigarh Plots V" vide allotment of plot letter dated 03.11.2018. They sent various communications dated 28.07.2020; 17.09.2020; 16.10.2020; 17.11.2020; 14.04.2021; 11.06.2021 and 13.09.2021 to complainants for execution and registration of agreement for sale. Even possession was offered to complainants vide letters dated 18.01.2021 and dated 08.02.2021. It is further argued that being NRIs complainants could not visit India for registration of conveyance deed. The complaint is barred by limitation and denied that possession was not handed over within 2 years from date of first deposit.

8. Respondent has also placed on record Partial Completion Certificate issued vide Memo No.GMADA/DTP/2023/4963 on 20.12.2023 by Greater Mohali Area Development Authority, Sahibzada Ajit Singh Nagar, Mohali, Punjab and statement of account dated 03.07.2025.

9. The undersigned considered the rival contentions of the parties and also perused the available record.

10. It is the case of respondent that it had sent letters between the months of July 2020 to September 2021 Annexure R-5 to Annexure R-11 to complainants for execution and registration of agreement for sale. Perusal of these letters annexed would reveal that these letters were sent through

courier but there is 'no proof of delivery of these letters' to the complainants attached with the reply. Even the receipt annexed did not find any mention about the complete address of the complainants. Further, Annexure R-12 is the letter dated 18.01.2021 is offer of possession of residential plot No.OCEP/II/1156 also sent through courier and 'no proof of delivery of this courier' has been attached by respondent and on this courier receipt also there is no mention of complete address of the complainants.

11. On the other hand, it is the case of the complainants that possession of the plot was to be handed over within two years from the date of first payment which has been denied by respondent. The first payment of Rs.5.00 lakhs was made on 07.01.2015 by the complainants and as such the date of possession would be 07.01.2017. In support of their case, complainants have placed on file a copy of judgement decided by the Hon'ble Supreme Court in the matter of "*Fortune Infrastructure and Anr Vs Trevor D'Lima and Or. (SC)*", Civil Appeals Nos. 3533-34 of 2017 decided on March 12,2018, to contend that only a reasonable period of time could be allowed to a developer to deliver possession. Complainants drew attention towards relevant para 15 of this judgement which is reproduced below:-

"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014...."

12. In this case the Supreme Court had held a period of 3 years to be reasonable.

13. Further, Section 13 of the Act reads under:

"13. No deposit or advance to be taken by promoter without first entering into agreement for sale.-- (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for

sale with such person and register the said agreement for sale, under any law for the time being in force".

14. The total sale consideration of the plot is Rs.30,99,129/- and 10% of this amount comes to Rs.3,09,912.90. Vide letter dated 09.03.2016 respondent informed complainants about successfully processing of their booking. Vide letter dated 03.11.2018, respondent issued allotment of plot No.1156 having area of 115.03 sq. yards (Ref No.OCEP/39) and mentioning in the body of said letter that the project has been registered with this Authority. The said allotment was subject to timely payment of all future installments' terms and conditions of application and agreement for sale.

15. As noted above in para 2, complainants have made more than the 10% of the total sale consideration as the first payment was made by complainants on 07.01.2015 to the tune of Rs.5,00,000/- and thereafter paid further amount also. It is clearly mandated in Section 13 (1) that no promoter shall accept a sum more than ten per cent of the cost of the apartment. Thus, in view of above legal preposition (Fortune Infrastructure, supra) it was the duty of respondent to execute the agreement for sale before taking further amount. No doubt, he has annexed various letter (Annexures R-5 to R-11) including courier receipt to show its *bona fide*, addressed to complainants to execute and register agreement for sale, but without any 'proof of delivery' of these letters by complainants. In this case complainants had made Rs.5,00,000/- on 07.01.2015. Thus, keeping in view the law of 3 years in the matter of 'Fortune Infrastructure' (Supra), it is held that complainants are entitled to payment of interest w.e.f. from 07.01.2018 till 20.12.2023 the date of issue of Partial Completion Certificate to the project by the competent authority.

16. The other objection of respondent is that this complaint is barred by limitation. Complainants have placed on record an order dated 08.09.2021 passed by the Full Bench of this Authority in the matter of "*Kanishk Kapoor Vs ATS Estates Pvt. Ltd.*" wherein it has been held that the Act of 2016 is a

complete Code in itself and no limitation has been prescribed thereunder for filing a complaint with the Authority or the Adjudicating Officer under Section 31 of the Act of 2016. Thus, this objection of the respondent is devoid of any merit and is rejected accordingly.

17. As a result of above discussion, respondent is directed:-

17.1 To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.90% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.90% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs.27,50,964/- with effect from 07.01.2018 till 20.12.2023 within sixty days from the date of receipt of this order.

17.2 It is a plot, respondent had already obtained Partial Completion Certificate on 20.12.2023, and placed on record a copy thereof. Complainants are therefore directed to take possession of plot immediately.

18. File be consigned to record room after due compliance.

(Binod Kumar Singh)
Member, RERA, Punjab