



Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018

Before the Bench of Sh. Rakesh Kumar Goyal, Chairman.

Phone No. 0172-5139800, email id: pschairrera@punjab.gov.in & pachairrera@punjab.gov.in

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|-----|--|----|--|
| 1. | Complaint No. | :- | GC No. 0019/2023UR |
| 2. | Name & Address of the complainant (s)/ Allottee | :- | Sh. Ashim Kumar Sen
R/o House No. 88, Street No. 2,
Patiala – 147002. |
| 3. | Name & Address of the respondent (s)/ Promoter | :- | 1. Estate Officer Patiala Urban Planning & Development Authority PDA
PUDA Complex, Urban Estate Phase-II,
Patiala, Punjab – 147001

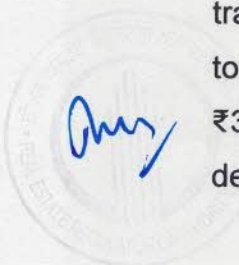
2. M/s. Omaxe Ltd. through its Director,
Omaxe House 7,
Behind Kalkaji Post Officer Kalkaji,
LSC, New Delhi – 110019. |
| 4. | Date of filing of complaint | :- | 02.02.2023 |
| 5. | Name of the Project | :- | PDA Omaxe City, Patiala |
| 6. | RERA Registration No. | :- | Unregistered |
| 7. | Name of Counsel for the complainant, if any. | :- | Sh. J.P. Singla, Advocate |
| 8. | Name of Counsel for the respondents, if any. | :- | Sh. Ashish Grover, Advocate for respondent no. 1.

Sh. Munish Gupta & Sh. Manjinder Kumar, Advocate for respondent no. 2. |
| 9. | Section and Rules under which order is passed | :- | Section 31 of the RERD Act, 2016 r.w. Rule 36 of Pb. State RERD Rules, 2017. |
| 10. | Date of Order | :- | 10.10.2025 |

Order u/s. 31 read with Section 40(1) of Real Estate (Regulation & Development) Act, 2016 read with Rules 16, 24 and 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.

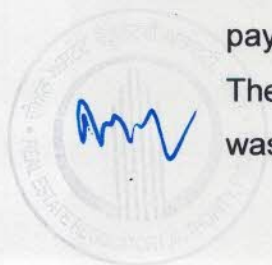
The present complaint dated 02.02.2023 has been filed by Sh. Ashim Kumar Sen (hereinafter referred as the 'Complainant' for the sake of convenience and brevity) u/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'RERD Act, 2016' for the sake of convenience and brevity) read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules' for the sake of convenience and brevity) before the Real Estate Regulatory Authority, Punjab (hereinafter referred as 'Authority') relating to an *Un-Registered Project* 'PDA-Omaxe City' Sirhind Road, Baran, Patiala seeking refund of deducted amount of Rs.76,601/- along with interest at the prescribed rate from the deposited amount till 22.11.2018 and on the balance amount till same is refunded.

2. The complainant respectfully submits that EWS Flat No. SF-4, Block Jasmine, Cluster D was originally allotted to one Amit Kumar and subsequently transferred to the complainant on 09.05.2011 on identical terms and conditions for a total consideration of ₹3,10,016/-, against which the complainant deposited a sum of ₹3,65,117/-. As per the allotment conditions, possession of the flat was to be delivered within three years; however, the respondents failed to develop the project,



which remains incomplete and abandoned. Despite repeated requests, the complainant was neither offered possession nor refunded the entire amount, and only a partial refund of ₹3,37,017/- was made, thereby wrongfully deducting ₹76,601/-, and that too without interest. A legal notice was also served but to no effect. Earlier proceedings before this Authority culminated in directions for refund with interest and costs, which were later set aside by the Appellate Tribunal with liberty to refile, and in view of the circular dated 27.06.2022 making complaints maintainable even against unregistered projects, the present complaint is now preferred. It is, therefore, prayed that the respondents be directed to refund the wrongfully deducted sum of ₹76,601/- along with interest at the prescribed rate from the deposited amount till 22.11.2018 and thereafter on the balance amount till its realization, or any other relief deemed just and proper in the facts and circumstances of the case, as the respondents have miserably failed to fulfil their contractual obligations and have deprived the complainant of his hard-earned savings.

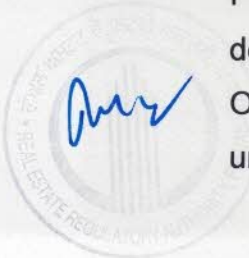
3. In response to the complaint, Respondent no.1 i.e. Patiala Urban Planning & Development Authority PDA filed its reply and submitted that the complaint is not maintainable as the delay is attributable solely to Respondent No.2 (M/s Omaxe Ltd.) under the Joint Development Agreement dated 16.11.2006, which made them responsible for timely development, provision of amenities, and delivery of possession. PDA has no liability for delay or compensation. Further, the allotment of EWS flats was under the Punjab Regional and Town Planning and Development Act, 1995, which provides remedies of appeal and revision under Section 45. Under Section 174 of the said Act, orders are final and bar jurisdiction of civil courts; hence this Authority lacks jurisdiction. There is also an arbitration clause in the allotment letter, and the matter is already pending before the Hon'ble Punjab and Haryana High Court in CWP No. 14348 of 2016. The complainant's declaration that the matter is not pending elsewhere is incorrect. On these grounds, the complaint deserves dismissal. The provisions of the Real Estate (Regulation and Development) Act, 2016 came into force prospectively (01.05.2016/01.05.2017) and do not apply retrospectively to this project. PDA applied for registration of the project in 2017, but it was rejected by RERA Punjab in 2018 for want of completion timelines; hence the project is not registered under RERA. The project was launched in PPP mode under the 1995 Act, and allotments were made on terms and conditions clearly accepted by the allottees. The complainant, having taken transfer of the flat in 2011, was bound by these conditions. Due to status quo orders of the High Court (2011–2013), development was delayed and installments were rescheduled. The complainant got the subject flat transferred in his name in 2011 and was bound by the terms and conditions of allotment, which clearly stipulate that possession is subject to timely payments, force majeure conditions, and reasons beyond the control of PDA/Omaxe. The complainant defaulted in payment of dues, requested surrender in 2018, and was refunded an amount of ₹3,03,713/- after lawful deductions as per the allotment



terms. The complainant defaulted in payment, later surrendered the flat in 2018, and was refunded after deductions as per rules.

4. On the other hand, Respondent no.2 (Omaxe Limited) submitted that the present complaint is not maintainable against Respondent No.2. The grievance of the complainant pertains to forfeiture of ₹76,601/- vide order dated 04.10.2018 (endorsed 23.10.2018) passed by the Estate Officer, PDA, under the Punjab Regional and Town Planning and Development Act, 1995. The said order is appealable and revisable under the provisions of the Act but has never been challenged. The complaint is further barred by limitation, as the statutory remedies were not availed within the prescribed period. Respondent No.2 is merely a developer under a Joint Development Agreement, having no role in collection, deduction, or forfeiture of amounts, which lie exclusively within the purview of PDA. The project ownership and rights of allotment/cancellation vest with PDA, and the impleadment of Respondent No.2 is therefore misconceived and amounts to misjoinder of parties. On merits, it is submitted that the project remained stalled on account of litigation before the Hon'ble High Court, status quo orders, and subsequent refusal of PDA to permit Respondent No.2 to resume development after issuing a termination notice. Even the inter se dispute between PDA and Respondent No.2 is sub judice before the Hon'ble High Court and the Special Committee headed by the Chief Secretary, Punjab. The project was also never registered under RERA, and as held by the Hon'ble Supreme Court in *Newtech Promoters & Developers Pvt. Ltd. v. State of U.P.*, complaints regarding unregistered projects are not maintainable. Further, as per the allotment letter dated 17.02.2011, no claim for refund or damages lies if development is hindered due to litigation or reasons beyond the developer's control. The complainant, having purchased the unit during subsisting litigation, was aware of the circumstances and cannot now claim relief. The complaint, therefore, is wholly misconceived, barred by law, and liable to be dismissed qua Respondent No.2.

5. The facts which are not in dispute are that EWS Flat No. SF-4, Block Jasmine, Cluster D was initially allotted to one Amit Kumar and was subsequently transferred in favour of the complainant on 09.05.2011 on the same terms and conditions. The total consideration for the flat was ₹3,10,016/-, against which the complainant deposited a sum of ₹3,65,117/-. As per the allotment terms, possession of the unit was to be delivered within a period of three years. However, the project was never completed and continues to remain incomplete. As a result, the complainant was not put in possession of the flat. Subsequently, on the request of the complainant, an amount of ₹3,37,017/- was refunded by the Patiala Urban Planning and Development Authority (PDA) after deduction of ₹76,601/-, the said deduction being made pursuant to an order dated 04.10.2018 passed by the Estate Officer, PDA. It is also admitted that PDA had applied for registration of the project under the Real Estate (Regulation and Development) Act, 2016 in 2017, but the said



application was rejected by this Authority in 2018 on account of lack of completion timelines. Meanwhile, the project itself has been subject to prolonged litigation before the Hon'ble Punjab and Haryana High Court in CWP No. 8100 of 2011 and CWP No. 14348 of 2016, wherein certain interim status quo orders also affected development activities.

6. The complainant has contended that despite making full deposit of the entire consideration, possession of the unit was never offered. Instead, only a partial refund was made, and an amount of ₹76,601/- was arbitrarily and wrongfully deducted without any fault attributable to him and without payment of interest on the deposited amount. It is further argued that the respondents failed to develop the project, which amounts to deficiency in service and breach of contractual obligations. Earlier proceedings before this Authority had culminated in directions for refund with interest, but the same were set aside by the Appellate Tribunal with liberty to refile. The complainant has placed reliance on the circular dated 27.06.2022 issued by this Authority, which permits complaints to be entertained even in respect of unregistered projects, and has prayed for refund of the deducted amount of ₹76,601/- along with interest at the prescribed rate from the respective dates of deposit until realization.

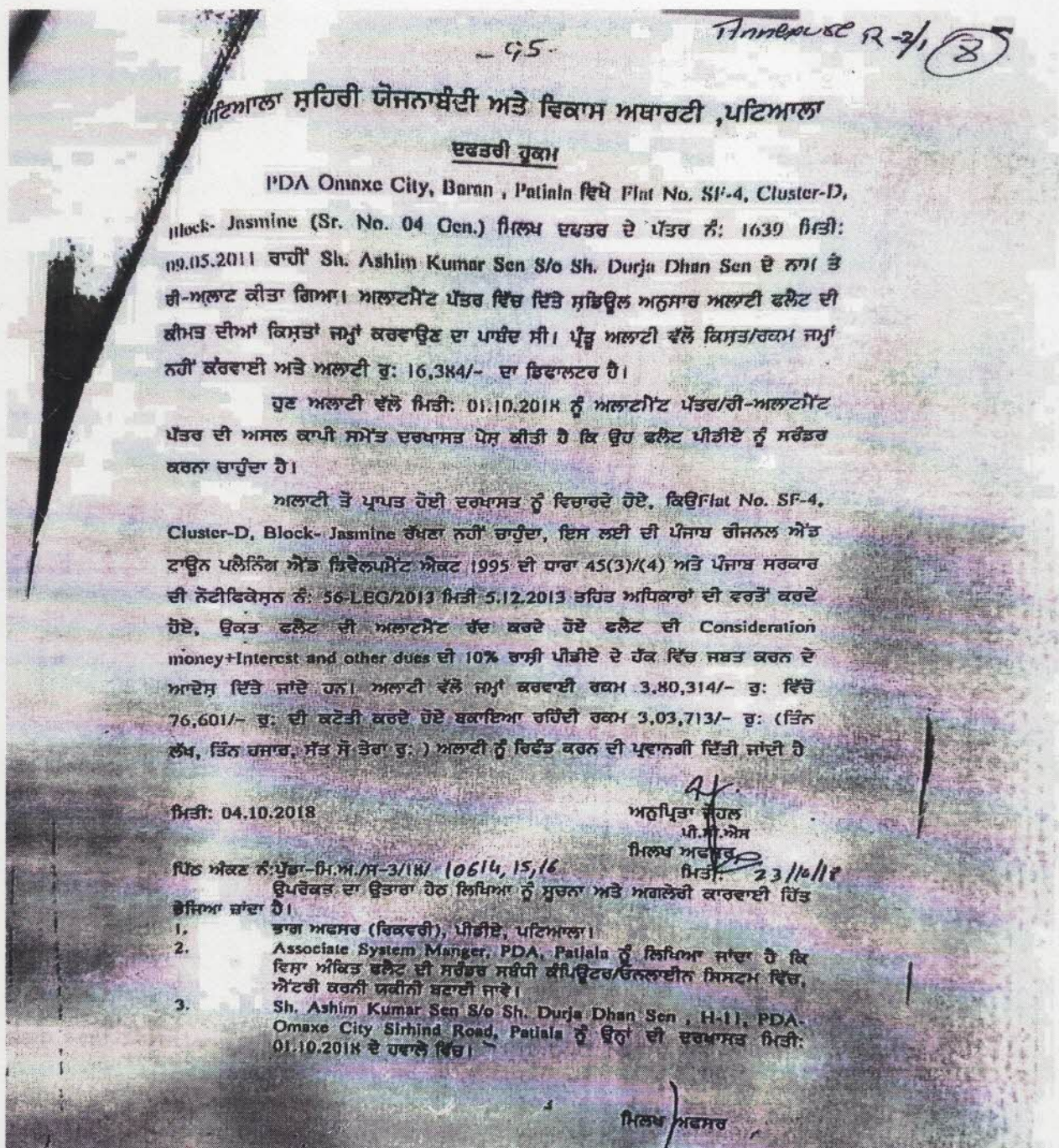
7. Respondent No.1, PDA, has opposed the complaint and submitted that as per the Joint Development Agreement dated 16.11.2006, responsibility for development, provision of amenities, and timely delivery of possession rested with Respondent No.2, Omaxe Ltd. PDA has no liability to pay compensation or interest for delay. It has further been submitted that the allotment of EWS flats was governed by the Punjab Regional and Town Planning and Development Act, 1995, which provides statutory remedies of appeal and revision under Section 45, while Section 174 of the said Act bars the jurisdiction of civil courts and by implication, this Authority. It is also pointed out that the allotment letter contains an arbitration clause, and that litigation concerning the project is already pending before the Hon'ble High Court in CWP No. 14348 of 2016. It is further submitted that the RERA Act came into effect prospectively and is not applicable retrospectively to this project, which was launched much earlier under the 1995 Act. The complainant, having taken transfer of the unit in 2011, was bound by the terms and conditions of allotment which clearly stipulated that possession would be subject to timely payments, force majeure conditions, and factors beyond the control of PDA or Omaxe. It has also been contended that the complainant defaulted in making timely payments, later requested surrender of the unit in 2018, and was refunded an amount of ₹3,03,713/- after lawful deductions as per the allotment terms.

8. Respondent No.2, Omaxe Ltd., has argued that the present complaint is not maintainable against it, since the grievance of the complainant relates only to the deduction of ₹76,601/- pursuant to the forfeiture order passed by the Estate Officer, PDA. It is pointed out that such an order is appealable and revisable under



the 1995 Act, but the complainant failed to avail those remedies within the prescribed limitation period. Omaxe has submitted that it was merely a developer under the Joint Development Agreement and had no role in collection, deduction, or forfeiture of amounts, which vested entirely with PDA as the allotting authority. The ownership of the project, as well as rights of allotment and cancellation, were with PDA, and therefore impleading Omaxe as a party to the present complaint is misconceived and amounts to misjoinder.

9. Having considered the material on record and the rival submissions, as per Annexure R-2/1, it is apparent that the complainant had deposited a sum of ₹3,80,314/- and was refunded ₹3,03,713/- after deduction of ₹76,601/- and not the amount alleged in the complaint. For ready reference Annexure R-2/1 of the reply is as below:-



9.1 The deduction was made pursuant to the order of the Estate Officer, PDA, passed under the provisions of the 1995 Act. Such orders are subject to

statutory remedies of appeal and revision before the competent authority under that Act. This Authority cannot sit in appeal over or nullify an order passed by the Estate Officer under a separate enactment. Furthermore, the role of Omaxe Ltd. was confined to development under the Joint Development Agreement. It neither allotted the flat nor dealt with refund or forfeiture, which were the exclusive domain of PDA. Accordingly, no liability for refund or forfeiture can be fastened on Omaxe Ltd.

10. It is further pertinent to note that, as regards the complainant's claim of having requested surrender of the flat, the record on file does not contain any annexure, supporting document, or contemporaneous correspondence filed by the complainant to substantiate this assertion, nor does the complaint itself make any specific averment in this regard. The only evidence on record is the order passed by Respondent No.1, the Estate Officer of PDA, which reflects that the complainant had indeed submitted a request on 01.10.2018 along with a copy of the original allotment/re-allotment letter. This clearly indicates that the complainant was fully aware of the terms and conditions of the allotment, including the forfeiture clause and the statutory framework under which the refund was to be processed, at the time of making the request.

11. The absence of any supporting documentation or annexures from the complainant demonstrates that he neither objected to the refund nor raised any dispute regarding the deductions at the time of surrender. If the complainant had genuine grievance regarding the refund amount or the deductions, he could and should have produced evidence of such objections contemporaneously. The fact that no such documents or communications have been placed on record further reinforces that the complainant voluntarily accepted the refund in accordance with the terms of the allotment and the statutory provisions of the Punjab Regional and Town Planning and Development Act, 1995. This omission underscores that the present complaint is an afterthought and cannot form the basis of any claim.

12. It is also borne out from the record that the project has faced significant delays due to status quo orders passed by the Hon'ble High Court and other ongoing disputes between PDA and Omaxe. Although the circular dated 27.06.2022 allows filing of complaints in respect of unregistered projects, such jurisdiction does not extend to re-examining or setting aside a statutory forfeiture order passed under the 1995 Act. The complainant's remedy, if any, lies in pursuing appeal or revision under the said Act against the order of the Estate Officer, PDA.

13. It is also observed that the complainant had voluntarily applied for surrender of the flat, and the cancellation of allotment has been carried out in accordance with the statutory provisions and the terms of the allotment letter. The deduction of 10% of the consideration is in line with the forfeiture clause applicable to surrendered flats. The PDA has acted within its jurisdiction under the Punjab



Regional and Town Planning and Development Act, 1995, and there is no liability on the developer (Omaxe Ltd.) regarding the refund, as the allotment and refund are matters solely within the control of PDA. The amount refunded to the allottee is correct as per the terms of the allotment and statutory provisions.

14. In sum, the complainant's claim regarding surrender and refund lacks any documentary support and is contrary to the material evidence on record. The order of Respondent No.1 clearly establishes that the refund, including the lawful deduction of ₹76,601/—, was processed in accordance with statutory powers and the terms of the allotment letter.

15. In the circumstances, the complaint against Respondent No.2, Omaxe Ltd., is dismissed as not maintainable in the present case. Since the forfeiture and deduction were carried out by PDA pursuant to its statutory powers, the proper remedy for the complainant lies under the Punjab Regional and Town Planning and Development Act, 1995, by way of appeal or revision. Consequently, the prayer for refund of the deducted amount along with interest cannot be granted by this Authority in the present proceedings.

16. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.

Chandigarh
Dated: 10.10.2025




(Rakesh Kumar Goyal),
Chairman,
RERA, Punjab.

A copy of the above order may be sent by the Registry of this Authority to the followings:-

1. Sh. Ashim Kumar Sen, R/o House No. 88, Street No. 2, Patiala – 147002.
2. Estate Officer Patiala Urban Planning & Development Authority PDA, PUDA Complex, Urban Estate Phase-II, Patiala, Punjab – 147001
3. M/s. Omaxe Ltd., Omaxe House 7, Behind Kalkaji Post Officer Kalkaji, LSC, New Delhi – 110019.
4. The Secretary, RERA, Punjab.
5. Director (Legal), RERA, Punjab.
6. The Complaint File.
7. The Master File.


(Sawan Kumar),
P.A. to Chairman,
RERA, Punjab.