

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

Complaint No.0222 of 2023
Date of Institution :23.06.2023
Date of Decision: 23.07.2025

Vikas Gupta, C-626. 6th Floor, Vipul Plaza, Sector 81, Faridabad, Haryana,
Pin Code 121007

....Complainant

Versus

Omaxe New Chandigarh Developers Private Limited, 7 Local Shopping
Center, Kalkaji, New Delhi, South West Delhi, Pin Code 110019

....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-PM0164)

Present: Shri Sajal Dhawan, Advocate for complainant
Shri Munish Gupta, Advocate for respondent

ORDER

Through this complaint, complainant seek issuance of direction to
respondent to pay charges towards delayed possession at the prescribed
rate from the supposed date of possession to the date of legal possession.

2. Brief facts as submitted by complainant in his complaint are
summarized below:-

2.1 Complainant booked a flat measuring 1920 sq.ft on 20th
March 2018 in the project "THE LAKE" being developed by
respondent at SAS NAGAR, Mullanpur, New Chandigarh,
Punjab.

2.2 In a settlement Agreement an amount of Rs.36,01,772 was
transferred from client id OCE/1621 to client id TLC/1179 of
this project on 04.07.2018 vide receipt no. 1648699. The said
unit was under Possession Linked Payment. As per this plan

50% of the amount was to be given at the time of booking and the remaining 50% was to be given at the time of possession.

2.3 A letter of Execution and Registration of Agreement for Sale was issued on 14.04.2021 mentioning therein that TLC/Caspean-E/ Ground/1 is allotted to complainant in the residential project THE LAKE, against basic sales price of Rs.81,97,192 out of which complainant had already paid Rs.36,46,614 to respondent.

2.4 It is further submitted that the Hon'ble Supreme Court in the matter of "M/S. FORTUNE INFRASTRUCTURE & ANR. VERSUS TREVOR D'LIMA & ORS." (Case no. 3533-3534 of 2017) has held that a time period of 3 years is reasonable time for the completion of the contract i.e. possession, as such possession should have been given on or before 20.03.2021 but has not been offered to complainant.

2.5 It is prayed that respondent be directed to pay delayed possession charges (DPC) at the prescribed rate of interest from the date of possession till actual legal possession.

3. Upon notice, Shri Munish Gupta, Advocate appeared on behalf of respondent and submitted reply dated 16.10.2023 which is summarized below:-

3.1 It is submitted that complainant allotted Unit No.OCE/1621 and made payment to respondent. Thereafter, complainant also booked another Unit in the project 'The Lake' vide application dated 20.3.2018 on paying Rs.50,000/-.

3.2 However, on request made by complainant in July, 2018, earlier booking was cancelled without any cancellation

charges and amount was adjusted in the newly booked Customer ID No.TLC/1179.

3.3 The main ground of filing the present complaint is delay in handing over possession of the Unit. However, complainant himself is a habitual defaulter as various letters dated 30.08.2018; 27.09.2018; 14.12.2018; 23.02.2019; 28.07.2020; 17.09.2020; 16.10.2020; 17.11.2020; 14.04.2021; 11.06.2021; 13.09.2021; 17.12.2021; 17.02.2022; 14.11.2020; and 16.01.2023 (Annexure R-1 colly) were sent for execution of Builders Buyer Agreement and payment of due amount. Complainant concealed these letters except letter dated 14.04.2021 annexed as Annexure C-7 with his complaint. As per plan, discount was availed by complainant. Complainant also concealed material fact that he was a defaulter in making payment for another booked unit in the other project of respondent at Ludhiana. Complainant is an investor and has booked three units in the projects of respondent. He has also filed complaint with this Authority (Annexure R-2 bearing GC No.0385/2021).

3.4 It is also emphasized that this Authority has already extended the period of completion of the project till 31.12.2023 (Annexure R-3), thus, there is no delay.

3.5 Complainant has not paid substantial amount, in view of construction linked plan, despite raising of demands by respondent. Respondent relied upon Section 19(6) of the Act of 2016 whereby allottee shall be responsible to make necessary payments as specified in time. The judgement cited by complainant is not applicable to the present case.

3.6 It is prayed that complaint be dismissed.

4. Complainant filed rejoinder dated 31.07.2024, reiterated the contents of the complaint. It is added that respondent violated the provision of Section 13 of the Act of 2016 by accepting Rs.34,46,614/- from complainant and also reproduced Section 13 of the Act of 2016 which is not being reproduced due to brevity. Complainant again referred the citation of Hon'ble Supreme Court (*Fortune Infrastructure, supra*) and stressed that the date of possession be considered as 20.03.2021. It is further submitted that in view of Section 18 of the Act of 2016 complainant is entitled for interest with effect from 20.03.2021. Complainant has also relied upon the order passed by Maharashtra RERA in the matter of "*Kamal Aggarwal Vs. Sakla Enterprises*" (Complaint No.CC006000000171603 wherein it has refused to differentiate between an investor in a housing project and a homebuyer and directed developer to honour contractual obligations. Complainant also relied upon the judgement titled "*Imperia Structure Limited Vs Anil Patni and anr.*" Civil Appeal No.3581-3590 of 2020, wherein it has been held that handing over possession is not to be taken from the date declared by promoter to RERA Authorities. Thus, the date of 20.03.2021 be considered as date of possession of the Unit. It is the prayer of the complainant to direct respondent to pay interest for the period of delay in handing over possession i.e with effect from 20.03.2021 till date of legal possession and respondent be further directed to execute builder buyer agreement.

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

6. Reiterating the contents of his complaint as well as rejoinder, it is argued by complainant that he has paid Rs.34,46,614/- against the flat TLC/1179 in the project "THE LAKE" being developed by respondent at

SAS NAGAR, Mullanpur, New Chandigarh, Punjab on 20th March 2018 and in a settlement a sum of Rs.36,01,772 was transferred from client id OCE/1621 to client id TLC/1179 on 04.07.2018 which was under Possession Linked Payment. As per this plan 50% was to be paid at booking and remaining 50% at possession. Complainant admitted issuance of letter of Execution and Registration of Agreement for Sale on 14.04.2021 mentioning therein allotment of TLC/Caspean-E/ Ground/1 to him against sale price of Rs.81,97,192 out of which complainant had already paid Rs.36,46,614 to respondent. He has also referred "*M/S. FORTUNE INFRASTRUCTURE & ANR.*" (supra) whereby a time period of 3 years is considered as reasonable time for the completion of the contract i.e. thus possession is to be delivered by 20.03.2021 but has not been offered to complainant.

7. It is argued by respondent that complainant was allotted Unit No.TLC/1179. Despite sending various letters as mentioned in reply (Annexure R-1 Colly) for execution of Builders Buyer Agreement and payment of due amount, complainant did not act. Complainant was a defaulter in making payment for another booked unit. He is an investor. It is also argued that this Authority has already extended the period of completion of the project till 31.12.2023 and there is no delay. Complainant has still to pay substantial amount to respondent. It is prayed that complaint be dismissed.

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

9. It is noteworthy that there is no allotment letter and agreement for sale placed on file by either of the parties. It is in the pleadings that the amount of Rs.36,01,772/- of earlier unit booked by complainant on 06.05.2013 vide customer ID OCE/1621 was transferred to Client ID

no.TLC/1179 under settlement held on 04.07.2018. The basic sale price of said unit was Rs.81,97,192/-. According to possession linked payment plan, 50% amount was to be given at the time of booking and rest 50% at the time of possession. As per para 8 of rejoinder dated 31.07.2024 it is the claim of the complainant that respondent despite accepting Rs.36,46,614/- has not executed the builder buyer agreement which is violation of Section 13 of the Act of 2016. In support of his case, complainant has also relied upon the judgement of 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. Complainant 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...."

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

11. It is the case of respondent that it had sent various letters (Annexure R-1-colly) addressed to complainant to execute and register the agreement for sale. Perusal of all these letters would reveal that these letters were sent through courier but 'no proof of delivery' has been attached with the reply. However, the complainant has attached Annexure-7 a letter dated 14.04.2021 sent by respondent to complainant for execution and registration of agreement for sale and stated in para no.6 of rejoinder that complainant's unit is referred to as TLC/Caspean-

E/Ground/I which has been allotted to the complainant in the residential project.

12. It is the admitted case of complainant himself that under a settlement agreement held on 04.07.2018 the amount of Rs.36,01,772/- of earlier unit of complainant allotted on 06.05.2013 vide customer ID OCE/1621 was transferred to Client ID no.TLC/1179 (present Unit) and the basic sale price of said unit was Rs.81,97,192/-. Thus, the above date of 04.07.2018 is considered to be the date of agreement and considering the above legal preposition of three years (*Fortune Infrastructure-supra*) being reasonable it is held that the date of possession is 03.07.2021.

13. It is established on record that till today possession of the Unit has not been handed over to complainant and accordingly he is entitled for payment of interest as mandated in 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, apartment 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".

14. As a result of above discussion, this complaint is allowed and respondent is directed:

14.1 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.36,46,614/- paid by complainant with effect from 03.07.2021 till the date of this order within ninety days as stipulated in Rule 17 of the Rules of 2017, in the first instance.

14.2 To further 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.36,46,614/- paid by complainant after the date of this order till the date of handing over valid possession.


14.3 However, it is made clear that respondent shall adjust the interest of due amount after the date of this order till the date of handing over possession of the Flat at the time of delivery of flat to complainant.

14.4 Complainant shall also pay interest, if any, as mandated in Section 19(7) of the Act of 2016 at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-Section 19(6) of the Act of 2016.

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

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

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


(Binod Kumar Singh)
Member, RERA, Punjab