

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

Complaint No. 0256 of 2023
Date of Institution : 14.07.2023
Date of Decision: 28.04.2025

Harcharan Singh, # 65, Ground Floor, Kalu Sarai, Opp FITJEE, Hauz Khas,
South Delhi, Delhi, Pin Code 110016

....Complainant

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd., 10 Local Shopping
Centre, Kalkaji, South Delhi, Delhi, Pin Code 110016

....Respondent

Present: Shri Shubhnit Hans, Advocate for the complainant
Shri Tejeshwar Singh, Advocate for the respondent

ORDER

This complaint in Form 'M' 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) was instituted on 14.07.2023 by the complainant as an individual against the respondent with reference to Section 18 of the Act of 2016 seeking possession of the booked 3 BHK Residential Flat No. TLC/CASPEAN-B/FIFTEENTH/1503 in the project of the respondent named 'The Lake' being developed at Omaxe New Chandigarh, SAS Nagar, Mohali, Punjab (Registration Number PBRERA-SAS80-PR0040).

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rule of 2017 are reproduced as under:

"31. Filing of complaints with the Authority or the Adjudicating Officer.-- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary

consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".

"Rule 36. Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]-- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".

3. The complainant submitted the following in the complaint, summarized below:-

- 3.1 It is stated by the complainant upon booking a 3 BHK Residential Flat in the Project of the respondent i.e. 'The Lake' he was allotted Flat No. TLC/CASPEAN-B/FIFTEENTH/1503, having super area of 1820 sq. ft. (approx.).
- 3.2 A sum of Rs.7,71,100/-(with taxes), was paid by the complainant before signing of the Agreement/Allotment letter and payments made by the complainant are mentioned in the Statement of Account issued by the respondent on 16.02.2022.
- 3.3 An agreement for sale was executed between the complainant and respondent on 17.09.2019. As per Clause 7.1 of the agreement for sale possession of the apartment unit was to be delivered on 31.07.2021.
- 3.4 The payment plan opted by the complainant was the 'Down Payment Plan'.
- 3.5 Out of the total sale consideration of Rs.76,78,139/- fixed for the flat, the Complainant had already paid the demanded amount of Rs.70,43,717.05.

3.6 It is further submitted that the complainant had availed a loan facility for buying the said residential flat from Oriental Bank of Commerce (now Punjab National Bank) and entered into a Tripartite Agreement on 15.10.2019 with bank and respondent.

3.7 It is contended that almost 5 years have lapsed since the execution of agreement for sale but possession has not been handed over till date.

3.8 After repeated reminders, the complainant was paid only a sum of Rs.1,20,000/- towards compensation in the form of a credit note and the respondent has failed to abide by the agreed terms.

3.9 Hence, this complaint with the prayer that

3.9.1 To direct respondent to handover valid possession of the unit to the complainant.

3.9.2 To further direct respondent to pay interest at the prescribed rate on the amount paid by the complainant from the date of possession till the date of handing over valid possession of the flat, as per the provisions of the Act of 2016.

4. Upon notice, Shri Tejeshwar Singh, Advocate appeared for the respondent and submitted reply dated 22.01.2024 which is summarized below:-

4.1 It is averred that the complainant booked the flat for investment purposes only and thereafter agreement for sale was executed on 16.09.2019. Learned Counsel for the respondent has reproduced relevant clauses of the application form and agreement to emphasise that payment plan, schedule of payments and other conditions were duly agreed upon in the application form during agreement to sale. The clauses of agreement to sale were also

reproduced which are as per Model Agreement provided under Rule 8(1) of the Rules of 2017.

- 4.2 It is further averred that as per Additional Down Payment Plan adopted by the complainant, additional discount was offered with a rider that in case of failure to make timely payment, the respondent was having right to withdraw such rebate/discount. The actual price of the unit was Rs.84,56,884.80, however, the same was allotted to the complainant for a sum of Rs.74,14,438.80 after giving a huge discount of Rs.10,42,446/-. The payment plan is part of agreement as Schedule C-2
- 4.3 The complainant availed a loan of Rs.49,99,000/- from Oriental bank of Commerce, and a tripartite agreement was entered into between the complainant, respondent and said bank.
- 4.4 The respondent tabulated 61 days as delay period of payments contended that this period may be adjusted for calculating the prospective date of delivery of possession.
- 4.5 The respondent also relied upon the pandemic of Covid-19 and stated that RERA itself had granted 6 months reprieve to the promoters. The complainant was duly informed about due of interest due to delay in making payments. The complainant has violated the conditions of the payment plan opted by him. However, upon reaching a compromise, it was decided that the respondent shall not recover Rs.10,42,446/- for violation of the payment plan. The respondent further issued credit note of Rs.1,20,000/- in favour of the complainant.
- 4.6 It is further contended that if this Authority is deciding the case in favour of the complainant regarding payment of interest, then the discount of Rs.10,42,446/- already granted to the complainant be

set off from the awarded interest along with amount of delay interest for 61 days. Also, the amount of Rs.1,20,000/- issued in the form of credit note be reversed in favour of the respondent.

- 4.7 The complainant has defaulted in making timely payments and thus violated Section 11(5) of the Act of 2016 and various clauses of agreement to sale which provides the promoter a right to cancel the allotment. It provides further right to forfeit earnest money and other non-refundable amount but as a gesture of goodwill, respondent is not resorting to it.
- 4.8 The complainant is defaulter itself for the payment plan selected by himself thus he is not entitled for delayed interest.
- 4.9 The present complaint is bad for non-joinder of necessary party. The complainant has not impleaded Oriental Bank of Commerce from where he availed housing loan for making payment to the respondent of the allotted flat.
- 4.10. It was denied that no additional discount was granted as alleged by respondent and the prices are identical for all allottees. The delay in payment was accepted but it was termed as very small delay.
- 4.11 The complainant has concealed the fact about the payment plan he opted; about his delayed payments and also reaching of compromise/settlement with the respondent.
- 4.12 The present complaint is barred by limitation as the agreement for sale was entered into on 16.09.2019 and the complaint should have been filed within three years i.e by 16.09.2022 whereas the present complaint was instituted on 14.07.2023.
- 4.13 While replying to parawise contents of the complaint, the respondent has repeated the contents already noted above.

4.14 It is the prayer of the respondent that the complaint be dismissed with costs.

5. A rejoinder dated 11.09.2024 was filed by the complainant reiterating the contents of his complaint and controverting the contents of the reply of the respondent.

6. It is noteworthy that during proceedings learned Counsel for the complainant filed an application dated 06.12.2024 for placing on record offer of possession issued by the respondent and account statement of the complainant demanding Rs.7,62,693/-. It is mentioned therein that the area and price of the unit was increased by 35 sq. ft @ 4646.64 sq. ft and price from Rs.76,78,139/- to Rs.78,41,996/- respectively.

6.1 Thereafter, learned Counsel for the respondent also filed an application dated 27.03.2025 for placing on record occupancy certificate dated 26.11.2024 and offer of possession for carrying out fit outs sent to the complainant on 08.10.2024.

6.2 Further, vide application dated 01.04.2025, the complainant also placed on file an email dated 19.12.2024 sent by the complainant to the respondent stating that he has received letter dated 05.12.2024 offering possession and raised his grievance that the complainant is ready to take possession subject to payment of interest for the period of delay by the respondent to the complainant; he was not clear about the status of occupancy certificate and also about the increase of area and resultantly increase in the price of the unit. It is also mentioned in the email dated 19.12.2024 that the complaint is pending before this Authority.

7. The undersigned heard arguments of both the Counsels.

8. While reiterating the contents of his complaint, rejoinder and denying the contents of the reply, learned Counsel for the complainant denied that an additional discount was granted to the complainant. The complainant further denied that the actual cost of the unit was Rs.84,56,884.80 exclusive of other charges. The rebate of Rs.10,42,446/- was due to the payment plan opted by the complainant with the undertaking that payments will be made within time and that was the reason for bringing down the basic sale price to Rs.74,14,438.80 and no additional discount was given exclusively to the complainant. Learned Counsel for the complainant admitted that there was delay in payments but was of merely a few days. Learned Counsel for the complainant further argued that undoubtedly the respondent issued credit note of Rs.1,20,000/- but this amount was not as per the provisions of the Act of 2016. The complainant stated that he has already paid a sum of Rs.70,43,717.05 and is ready to pay the balance sum at the time of offer of possession of the flat allotted to the complainant by the respondent. It is further argued on behalf of the complainant that as per clause 7.1 of the agreement for sale dated 16.09.2019 possession was to be delivered on or before 31.07.2021. However, till today, possession of the flat in question has not been offered to the complainant. Thus, the complainant is entitled for payment of interest for the period of delay.

h/ 9. The counsel of respondent reiterated his reply during arguments. He drew attention towards his application dated 27.03.2025 for placing on record occupancy certificate dated 26.11.2024 and offer of possession for fit outs dated 08.10.2024. Learned Counsel for the respondent also drew attention of the bench towards application dated 06.12.2024 submitted by the complainant along with statement of account dated 08.10.2024, for placing on record the offer of possession dated 08.10.2024 (Annexure-9). He further argued that there was delay on the part of complainant in making payments and also mentioned about the table showing the 61 days of delay in making

payment. He also argued that due to Covid-19 the construction was at snail's pace. He further argued that if this Authority is inclined to award interest for the period of delay, then the discounted amount of Rs.10,42,446/-, amount of credit note of Rs.1,20,000/- and payment of interest on the amounts paid with delay be adjusted from this awarded interest and complainant be directed to pay balance, if any, at the time of taking possession of the flat.

10. The undersigned considered the rival contentions of the parties and also gone through the record of this file.

11. It is the case of the respondent that before the date of handing over the unit in question on 31st July, 2021, lockdown was imposed in the entire country on 22nd March, 2020, due to the pandemic of Covid-19 and, thereafter Government of India 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."

12. It is noteworthy that this Authority also 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 compliance in relation to real estate projects which had become due between 15th March, 2020 and 15th September 2020, by six months from the original date.

13. It is also noted 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 reality 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 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..."

14. Further the argument raised by Counsel for the respondent that heavy discount of Rs.10,42,446/- was extended to the complainant and further a credit note of Rs.1,12,000/- was also issued in favour of the complainant. However, this argument has no force as it is the case of the complainant that he had opted for down payment plan under which he was entitled to this discount and the similar discount is given to all allottees of similar pedestal. The respondent offered the payment plans and the best was chosen by the complainant. Further, regarding the credit note of Rs.1,12,000/- it is noted that this is an amount issued by way of a credit note in lieu of non-payment of interest/compensation for the period of delay in handing over possession. As noted above valid possession was to be handed over to the complainant on or before 31.07.2021 and it is a matter of record that the respondent obtained occupancy certificate on 26.11.2024, i.e it is apparent on record that there is more than 3 years delay.

15. Regarding the further objection of the respondent that the present complaint is bad for non-joinder of the Bank from where the complainant has availed loan. It is the case of the complainant that he is seeking possession along with interest for the period of delay and not refund of the amount deposited by him. In case he was seeking refund then the bank was a necessary party and not in the case of seeking possession along with interest for the period of delay. It is held accordingly.

16. Further, the objection of the respondent that the present complaint is barred by limitation as the complaint is filed after more than 3 years of agreement to sale. It is noted that as per agreement for sale executed on 16.09.2019, possession was to be delivered on or before 31.07.2021. However, till 31.07.2021 possession was not delivered to the complainant, hence he has filed the present complaint on 14.07.2023. Even as per the plea of respondent for taking 3 years as limitation period the period of limitation

starts from 31.07.2021 and not from 16.09.2019 as claimed by the respondent. Thus, it is held that the present complaint is within limitation.

17. From the above discussion, it is evidently clear that there is a delay of several months on the part of the respondent in handing over possession of the flat to the complainant. Thus, the complainant is entitled for interest, as prescribed in Section 18(1) of the Act of 2016, for the period of the delay in handing over possession of the flat in question.

18. Section 18(1) of the Act of 2016 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)

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)"

19. As a net result of the above discussion, this complaint is accordingly allowed and respondent is directed to pay interest under Section 18(1) of the Act of 2016 at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant w.e.f 31.07.2021-the date agreed for handing over possession till 26.11.2024-the date of issue of Occupancy Certificate by the competent authority and offer of possession. The respondent is further directed to adjust this arrear of interest against the due balance payment to be paid by the complainant while taking over possession of the flat.

20. However, 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.

21. The complainant is also directed to take physical possession of the flat in question as the respondent had already obtained occupancy certificate on 26.11.2024 and offered possession.

22. 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".

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


(Binod Kumar Singh)
Member, RERA, Punjab