

**BEFORE SH. ARUNVIR VASHISTA, MEMBER-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/GC No.0294 of 2023

Date of filing: 21.08.2023

Date of decision: **17.11.2025**

Prof. (Dr.) Anuradha Sharma, Former Professor & Head, AIIMS, Jodhpur and Bilaspur, resident of # 486A, UGF, Ambrosia Omaxe S.A.S. Nagar (Mohali), Punjab

...Complainant

Versus

1. OmaxeNew ChandigarhDevelopers Pvt. Ltd. 10, Local Shopping Complex, Kalkaji Central Delhi, Delhi Pin Code 110019, India Trade Tower, First Floor, Baddi, New Chandigarh, Kurali Road, District Sahibzada Ajit Singh Nagar (Mohali)Punjab
2. State Bank of India, RASMECCC, SBI, High Court Jodhpur, Rajasthan Pin Code 342001

... Respondents

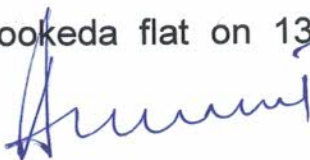
Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Advocate Karan S. Gill, representative for the complainant
Advocate Tejeshwar Singh, representative for respondent no.1
Advocates Simranpreet Kaur and Chandeeep Singh for respondent no.2

ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) against the respondents.

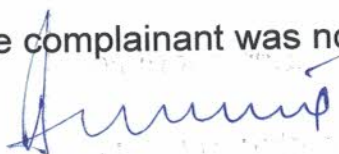
2. The brief facts as per averments in the complaint are that complainantbookeda flat on 13th August 2014 in the project 'The



Lake, Omaxe' of respondent. According to the allotment letter signed in May 2015 possession of the flat in question was to be delivered within 48 months including a grace period of six months i.e. on or before May, 2019. But respondent failed to deliver the possession as was agreed. The basic sale price of the flat was Rs.47,06,158/- for the carpet area of 1285 sq. ft. The complainant had paid Rs.52,24,651 to the respondent till April 2023. On 1st August 2023, she had received the "Offer of Possession" dated 26th July, 2023, with an account statement mentioning total cost of the flat as Rs.63,23,033/- for an area of 1405 sq. ft. And she was thus asked to deposit Rs.14,25,646/- more till 6th April 2023 (as per a demand letter). The total cost of flat mentioned was Rs.56,75,586 for an area of 1285 sq. ft. consistent with the Allotment Letter. There was thus an unexpected increase in the cost of seven lac rupees and in the area from 1285 to 1405 sq. ft., in just three months' time. The offer of possession had already been delayed by four years, and a huge interest in her house loan had accumulated because of this delay. Thus, the respondent had violated the terms of the agreement and also contravened the provisions of the RERA Act. It was also alleged by the complainant that she had to take a House Loan Rs. 45 lacs from SBI for this property in January 2016. The complainant ultimately being dissatisfied did not want possession of the flat because of financial difficulties created by the delay in the offer of possession and sought refund of her paid amount as she did not intend to remain in project, as per the provisions of the RERA Act. Hence, the present complaint.



3. Upon notice, respondent-promoter filed written reply contesting the complaint. Booking of the flat in question by the complainant in the project of the case in hand has been admitted and it was submitted that complainant defaulted in making timely payments of the unit under the agreement entered into between the parties, despite multiple demand notices and reminders being issued to her. It was then submitted that on 18.07.2023, respondent no.1 obtained the Completion Certificate relevant to the present unit. Accordingly, on 26.07.2023, an 'offer of fit-out for possession' letter was sent to the complainant, along with pending dues. On 10.10.2023, respondent no.1 also obtained Occupancy Certificate for the tower in which the present unit was located. The possession was to be delivered within a total period of 48months, as per clause 40(a) of the allotment letter, subject to timely payments by the complainant. However, the complainant committed default in making payments of instalments. The above said period of 42 months was to be computed by excluding Sundays, bank holidays and other government holidays and the days of cessation of work at site. As such, it could not be claimed by the complainant that there was delay in delivery of possession. It was also submitted that offer of possession has already been made to complainant and she was supposed and obliged to take the possession of the flat within two months upon the payment of balance amount as per Section 19 (10) of the Act. Once the offer of possession was made upon getting partial completion of the project, she could not afford to withdraw from the project claiming refund of the entire amount. It was then submitted on behalf of the promoter that the complainant was not end user and therefore did not

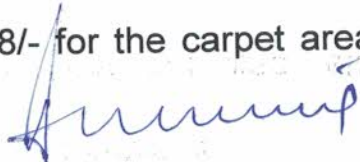


fall within the definition of consumer and had rather entered into an agreement of purchase with the respondent for investment purposes and therefore was not bonafide in her claim and the complaint therefore was not maintainable. It was finally averred that the present complaint was an abuse of the process of law. Denying rest of the averments of the complaint, prayer was made for dismissal of the complaint.

4. Respondent no.2 bank filed its separate written reply submitting therein that the answering respondent only processed the loan application of the complainant and after making due verification, sanctioned a Home Loan of Rs.45,00,000/- to complainant vide loan sanction letter dated 29.12.2015 and a tripartite Agreement dated 04.06.2016 was also executed between complainant, respondent no.1 and the answering respondent regarding the home loan advanced by it in favour of complainant for the aforesaid flat, according to which the answering respondent shall have the first lien over the property in question for the due repayment of the loan advanced by it.

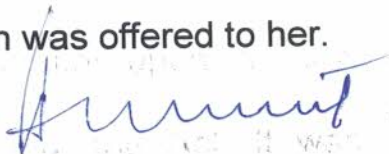
5. Complainant filed rejoinder and broadly reiterated the contents of the complaint.

6. While arguing on behalf of complainant, it was contended by her learned counsel that as per the agreement to sell executed between her and promoter possession of the sold flat was to be delivered on 29.06.2019 i.e. within 42 months from the date of execution of the agreement. But respondent failed to deliver the possession as was agreed. The basic sale price of the flat was Rs.47,06,158/- for the carpet area of 1285 sq. ft. It was rather vide



notice dated 26.07.2023 the respondent/ promoter made an offer of possession by claiming much more agreed amount that was increased unilaterally against the agreed price fixed for the same. It was then submitted that such an offer demanding unilaterally increased price was no valid offer nor it could be considered so having no justification being against the terms of the contract as well. Moreover, provision of Section 14 of the Act has also been violated as the exaggerated amount has been demanded towards the sale price on the pretext of increase in area which was done not with the previous consent of the complainant and other allottees. But here, by way of her present complaint she simply seeks refund of her paid amount as she did not intend to remain in project, in accordance with Section 18 (1) of the Act.

7. While opposing above submissions and contentions, it was argued on behalf of respondent/ promoter that complainant had absolutely no case made out for claiming any sort of refund specially in view of the fact that offer of possession has already been made to her and she was supposed and obliged to take the possession of the flat within two months upon the payment of balance amount as per Section 19 (10) of the Act. It was also contended on behalf of respondent/ promoter that once the offer of possession was made upon getting partial completion of the project, she could not afford to withdraw from the project claiming refund of the entire amount. Moreover, in case the authority finds that she could have withdrawn from the project and was entitled to claim her refund still she could not have claimed interest for the period extending beyond the date after possession was offered to her.



8. Submissions and contentions of the parties have been considered and examined in the light of facts and circumstances coming on record. Although much has been argued on behalf of the parties in support of their respective cases, yet the claim of complainant remains is of simply refund of the amount paid by her as per Section 18 of the Act, which speaks 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) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

9. A plain reading of the provisions of above Section makes it abundantly clear that an indefeasible right has been conferred upon the allottee in case promoter fails to complete or was unable to give possession of an apartment in accordance with the terms of the agreement for sale. In the case in hand, it also remains undisputed that possession of the apartment was not given to the allottee/ complainant as per the agreed/ fixed date in the agreement which

was 29.06.2019. Whereas a letter offering possession was issued to complainant on 26.07.2023. Against the said right accruing to complainant in case he or she wished to withdraw from the project seeking refund of the amount paid by her no such argument could be advanced or could hold good pressing into service the obligation/ duty of allottee under Section 19(10) of the Act that speaks as under:

“19(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.”

10. Even if the above obligation imposed on the allottee is pressed into service, her right that accrues to her regarding claiming refund on her wishing to withdraw from the project could not be taken away or defeated since admittedly the promoter failed to deliver the possession as per the terms of the agreement. Respondent thus has to refund the amount paid as and when it is so demanded by the allottee. It is also mentioned in the clause 10 of the Section that an allottee shall take physical possession within a period of two months of the Occupancy Certificate issued for the said apartment or plot. In this way also respondent is not in a position to deny her refund alongwith interest thereon at the prescribed rate as Occupancy Certificate too was obtained by the promoter on 10.10.2023 while she filed the present complaint claiming her refund in the month of August i.e. 21st August 2023. If for argument's sake even the submission made on behalf of the promoter is accepted with regard to non-

performance of duty by the allottee, the complainant could decide to go for the possession within two months of the Occupancy Certificate which itself was issued in October 2023. Thus, the above provision of Section 19 clause 10 was not in a position to negate or deny the right conferred upon the allottee by Section 18 of the Act that accrues to the allottee when he or she decides to withdraw from the project where promoter failed to deliver the possession as per the terms of the agreement which is there in the case in hand. From this angle also, if the case is seen the complainant is very much within her right to claim refund as two months were yet to expire even after issuance of the Occupancy Certificate whereas the complaint had been filed by the complainant on 21.08.2023.

11. Accordingly, as an outcome of above discussion, the complaint is accepted and the respondent/ promoter is directed to refund the amount deposited by the complainant with it along with interest thereon at the prescribed rate (today's highest MCLR rate plus 2%) from the date of deposit till the date of its refund. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. However, it is made clear that the first charge on the refund amount shall be of respondent no.2/ State Bank of India from whom complainant availed loan.



**(Arunvir Vashista),
Member, RERA, Punjab**