

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

Complaint No.0292 of 2023
Date of Institution :19.08.2023
Date of Decision: 05.02.2025

Mohit Kapoor, House No. 299, Ajit Nagar, District Patiala, Patiala,
Punjab, Pin Code 147001

....Complainant

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. Corporate Office
10, LSC, Kalkaji, New Delhi, Delhi, PIN Code 110019

....Respondent

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

Present: Shri Mohd. Sartaj Khan, Advocate, for the complainant
Shri Arjun Sharma, 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 19.08.2023 by the complainant as an individual against the respondent-M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. seeking possession of the Unit No. TLC/CASPEAN-E/18/1802, having Carpet area of 1920 Sq. Ft. / 178.37 Sq. Mtr. in the project "THE LAKE", situated at OMAXE New Chandigarh, (Registration Number PBRERA-SAS80-PR0040) being developed by respondent along with interest for the period of delay in handing over possession. As per

Allotment letter dated 22.09.2015, the basic sale price of the unit was Rs.80,44,800/- and the net amount of the said unit is Rs.96,85,392/-

2. For the sake of ready reference, Section 31 of the Act of 2016 read with Rule 36(1) of the Rules 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 points in the complaint that:-

- 3.1 At the time of booking the respondent represented of having all the necessary approvals from the competent Authority.
- 3.2 The complainant booked a Unit No.TLC/CASPEAN-E/18/1802, having Carpet area of 1920 Sq. Ft. / 178.37 Sq. Mtr. in the Project name "THE LAKE", situated at OMAXE New Chandigarh.
- 3.3 Allotment Letter was issued to the complainant by the respondent on 22.09.2015 (Annexure C-1).
- 3.4 It is submitted that as per the Allotment letter dated 22.09.2015, the Basic sale price of the unit was Rs.80,44,800/- and net amount of the said unit was Rs.96,85,392/-.
- 3.5 The complainant has paid an amount of Rs.77,64,356/- which is more than 95% of the total sale price of the said unit. It is alleged that all payments were made to the respondent on time.
- 3.6 The complainant has opted for Subvention Payment Plan (Annexure C-2) as such the remaining amount was to be paid only after receiving the offer of possession of the said unit from the respondent.
- 3.7 It is contended that as per the Clause 40(a) of the Allotment letter possession of the Unit was to be delivered by the respondent on or before 21.09.2018. But the respondent did not offer possession till date and the project is nowhere near completion.

- 3.8 The interest for period of delay in handing over possession has also not been paid by the respondent till date.
- 3.9 It is stated that a demand letter dated 02.06.2018 (Annexure C-3) was issued by the respondent, threatening the complainant by way of demanding extra payments, to cancel the said unit and forfeiting the hard-earned money paid by the complainant.
- 3.10 The complainant under the threat, expression of cancellation and forfeiting of his hard-earned money further paid Rs.5,17,119/- on 27.10.2018.
- 3.11 Complainant quoted Clause 9.2 of the RERA Model Agreement, whereby the allottee can stop making further payments to promoter as demanded in case of any default by him.
- 3.12 Even the revised completion date i.e July 2021 of the project disclosed by the respondent to this Authority has also been passed and the project is now under the lapsed project list at the website of Authority.
- 3.13 It is stated that even after delay of more than 3 Years, possession of the Unit has not been handed over to the complainant despite payments in time.
- 3.14 It is alleged that the respondent has neither paid any compensation nor any interest for the delayed period on the amount of Rs.77,64,356/- paid by complainant, thus, the respondent has violated Sections 18 and 19 of the Act of 2016.

3.15 It is further submitted that the respondent has not obtained Occupancy/Completion Certificate (OC/CC) from the Competent Authorities till date.

4. It is the prayer of the complainant that the respondent be directed to pay interest for the period of delay on the amount of Rs.77,64,356/- till the date of offer of possession after obtaining OC/CC from the competent Authorities with the following prayers also that:

4.1 Respondent be directed to Pay Rs.1,50,000/- as cost of litigation.

4.2 Respondent be punished under Section 61 of the Act of 2016 for violating Section 13 of the Act along with other various provisions of the Act (supra).

4.3 Respondent be directed to revive the RERA Registration as per Section 8 of the Act of 2016.

5. In support of his case the complainant has attached various annexures including allotment letter, and cancellation notice etc.

6. Upon notice, respondent appeared through Counsel and submitted his reply dated 17.01.2024 taking the preliminary objections/submissions to the following effect that:

6.1 The respondent denied each and every statement, submissions and contentions mentioned in the complaint being contrary and inconsistent with the facts of the case.

6.2 It is alleged that the instant complaint is not maintainable under Section 31 of the Act of 2016 as none of the provisions of the said Act of 2016 have been contravened/violated by the respondent.

- 6.3 It is further contended that that as per Clause 62 of the allotment letter, the instant dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 and prayed that matter be referred to the Arbitrator as the present case raises complex questions of facts and would involve detailed evidence. Hence, this Authority does not have jurisdiction to entertain the present complaint.
- 6.4 It is alleged that the instant complaint besides being misconceived, erroneous; and is untenable in the eyes of law.
- 6.5 The respondent admitted that vide Allotment Letter dated 22.09.2015, Unit No. TLC/CASPEAN-E/EIGHTEENTH/1802, with super area admeasuring 1920 sq.ft., was allotted to the complainant for a total amount of Rs.96,85,392/- in their project 'The Lake' which did not include amount towards stamp duty, registration charges, cost towards individual electricity meter, external electrification, water and sewerage, EDC, IDC, etc.
- 6.6 It is also submitted by the respondent that the allotment of said unit was made under the subvention scheme, whereby the respondent had agreed to bear interest on the loan amount disbursed by the bank till offer of possession.
- 6.7 It is contended that the instant complaint has been filed on the ground of delay in handing over of the possession of the Unit. The respondent relied upon Clause 40(a) and 40(g) of the Allotment Letter, whereby the development period/ construction period was 42 months (i.e. 36 months + 6

months extended grace period) and not 36 months as claimed by the complainant. The respondent has reproduced Clause 40 (a) of the allotment letter as under:-

"40(a) The Company shall try to complete to development/construction of the Unit/Project within 36 (Thirty Six) months from the date of signing of this Allotment Letter by the Allottee(s) or approval of the building plans, whichever is later and within such further extended grace period of 6 (Six) months. Completion of development of the Unit within such 42 (Forty Two) months is subject to force majeure conditions [as mentioned in Clause (b) hereunder] and subject to timely payment by the Unit Allottee(s) or subject to any other reasons beyond the control of the Company. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of the aforesaid reasons and the Company shall be entitled to a reasonable extension of time for the delivery of possession of the said Plot to the Allottee(s). The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/ concerned State Legislative Body".

Mr. 6.7.1 Thus, the above clause reveals that it had been agreed between the parties that in case of any default/delay in payment the date of handing over of the possession shall be extended accordingly. In this case the complainant has not paid the installments on time that had fallen due. Therefore, no relief for alleged delay in offering possession can be maintainable.

- 6.8 It is contended that in the event of failure of the respondent to handover possession by due time, Clause 40(g) of the Allotment Letter will be enforced and respondent is liable to make compensation of Rs.5/- per square feet per month for the entire delayed period. Respondent is ready to make payment of the compensation amount to the complainant, if any. No cause of action has arisen in favour of the complainant to file the instant complaint and is liable to be dismissed.
- 6.9 It is contended that there was no delay on part of the respondent in offering possession when the present complaint was filed.
- 6.10 It is submitted that upon application by the respondent to this Authority this project of the respondent was registered vide registration No. PBRERA-SAS80-PR0040.
- 6.11 The respondent also relied upon Section 4 and Section 19(3) of the Act of 2016.
- 6.12 It is further submitted that as per Section 19(3) of the Act the allottee shall be entitled to claim possession of the plot or building as per the declaration given by the promoter under Section 4(2)(I)(C) of the above said Act. Thus, it could not be said that there was any delay in handing over the possession.
- 6.13 It is further submitted that the date for completion of the Project had been extended to 31.12.2023 by this Authority itself and, therefore, it would be wrong to say that there had been delay in handing over of possession when the present complaint was filed.

6.14 The respondent also quoted the following citations in support of his case:

- i. **Secretary, Bhubaneswar Development Authority** Versus **Susanta Kumar Mishra** reported as [**V (2009) SLT, 242**], wherein the Hon'ble Supreme Court of India has held that the parties are bound by the unchallenged terms of the contract.
- ii. **PUDA (Chief Administrator) and Another Versus Mrs. Shabnam Virk** reported as **II (2006) CPJ 1 (SC)**, wherein the Hon'ble Supreme Court of India has held that an Allottee would be bound by the terms and conditions contained in the allotment letter agreed by him.
- iii. **Bharati Knitting Company Vs. DHL Worldwide Express Courier Division of Airfrieght Ltd,** reported as **II (1996) CPJ 25 (SC)**, wherein the Hon'ble Supreme Court of India has held that the parties are bound by the terms and conditions of a contract.

6.14.1 Thus, in view of the above the instant complaint is clearly beyond the scope of the unchallenged terms and conditions of the agreement entered between the respondent and complainant and is not liable to be entertained.

6.15 It is further submitted by the respondent that the unit was allotted under the construction linked payment plan and that the complainant has not paid the installments on time which had fallen due. The respondent also quoted Section 19(6)

and Section 19(7) of the Act of 2016 whereby the allottee is responsible to make necessary payments specified in the agreement and the possession is also subject to timely payment; and if the allottee delays in making the payment on time, then the allottee is liable to pay interest at such rate as may be prescribed.

- 6.16 It is submitted that the complainant had booked the unit under the subvention scheme and the respondent has paid a total amount of Rs.35,64,435.99 towards Pre - EMIs on the loan availed by the complainant, either directly to the lender bank or by way of reimbursement to the complainant.
- 6.17 It is further alleged by the respondent that still substantial amount is pending to be paid by the complainant and the respondent raised demand vide reminders (Annexure R-2, Pages 15-89) to show its bonafides.
- 6.18 The respondent has spent hundreds crores of rupees in the project to provide most of the services and amenities to make living of the allottees in the project.
- 6.19 It is further contended that the 'Agreement for Sale', for the purposes of Act of 2016 as well as Rules of 2017 is required to be executed *inter se* the Promoter and the Allottee. It is a matter of record that no such Agreement has been executed between respondent and complainant. Only Allotment Letter was issued which is much prior to coming into force of the Act of 2016.
- 6.20 The adjudication of the instant complaint for interest and compensation provided under Sections 12, 14, 18 and 19 of

Act of 2016 must be in reference to the Agreement for Sale and no other Agreement.

6.21 It is alleged that in view of the above submissions no relief can be granted to the complainant and the complaint is not maintainable.

7. While replying to the facts of the case, the respondent has admitted the allotment of the unit, issuance of allotment letter and also repeated the contents of the above objections/ submissions, herein again which are not being discussed for the sake of brevity. It is the prayer of the respondent that the complaint be dismissed with exemplary costs.

8. Learned Counsel for the complainant submitted his rejoinder/submissions reiterating the contents which are replica of the complaint filed by the complainant under Section 31 of the Act of 2016. Regarding the arbitration Clause 62 of the allotment letter dated 22.09.2015, the complainant relied upon judgement passed on 21.10.2022 by the learned Adjudicating Officer, RERA, Punjab in the matter titled "*Rajesh Kumar Singhal Vs Barnala Builders*", AdC No.1390 of 2019 wherein it was held that arbitration cannot prevail over RERA. Complainant emphasized that possession of the unit was to be handed over within 36 months from the date of allotment letter i.e by 21.09.2018 which has not been handed over despite lapse of 5 years and also referred Clause 40(a) of the allotment letter. In reply to the objection raised by the respondent regarding mentioning unreasonable Clauses like exclusion of development days, Sundays, bank holidays, enforced government holidays and days of cession of work in handing over possession, it was also emphasized that no notification or

government document has been produced by the respondent on record regarding the above exclusion of holidays. The complainant relied upon the judgement of the Hon'ble Supreme Court passed in the case titled "*Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna*", Civil Appeal No.5785 of 2019 wherein it has been held that '*the incorporation of one-sided and unreasonable clauses in the apartment buyer's agreement constitute unfair trade practices. Thus, the developer cannot compel apartment buyers to be bound by one-sided contractual terms contained in the apartment buyer's agreement.*' It is also submitted that despite receiving about 95% of the total cost, the respondent did not issue any offer of possession, compensation or interest for the period of delay in handing over possession. The complainant also placed reliance upon two orders passed by the Haryana Real Estate Regulatory Authority in the matters of '*Ruhi Roy Vs M/s Ashiana Dwellings Pvt. Ltd.*', complaint No.7770 of 2022 decided on 30.05.2023 and '*Akshay Kumar Vs M/s Supertech Ltd.*', Complaint No.885 of 2020 decided on 18.08.2021 allowing both these complaints wherein interest for delayed possession, in cases where subvention payment plan, was opted. It is the prayer of the complainant that the respondent be directed to pay interest on the amount of Rs.77,64,356/- paid by the complainant to the respondent for the period of delay in handing over possession of the Unit.

9. The undersigned has heard arguments of both the counsels and also perused the available record.

10. The learned Counsel for the complainant argued that the complainant booked a Unit No.TLC/CASPEAN-E/18/1802, having Carpet area of 1920 Sq. Ft. / 178.37 Sq. Mtr. in the Project name "THE LAKE", situated at OMAXE New Chandigarh and Allotment Letter was also issued

to the complainant on 22.09.2015. The net amount of the said unit was fixed at Rs.96,85,392/- and the complainant has paid an amount of Rs.77,64,356/- of the total sale price of the said unit. It is further argued that the complainant has opted for Subvention Payment Plan. As per the Clause 40(a) of the Allotment letter possession of the Unit was to be delivered to the complainant on or before 21.09.2018. The respondent issued a demand letter dated 02.06.2018 and under threat of cancellation of the said unit, the complainant paid the above said amount of Rs.5.17,119/- on 27.10.2018. It is further argued that the respondent has neither paid any compensation nor any interest for the delayed period in handing over possession of the unit on amount of Rs.77,64,356/- thus, the respondent has violated Sections 18 and 19 of the Act of 2016. It is further argued that the respondent has not obtained Occupancy/Completion Certificate (OC/CC) from the Competent Authorities till date.

11. The learned Counsel for the respondent reiterated the contents of his reply and argued that as per clause 40(a) of the allotment letter, possession was to be delivered within 42 months (36 months + 6 months extended grace period) i.e by 21.03.2019 and not by 21.09.2018 as claimed by the complainant in his complaint. The learned Counsel for the respondent further relied upon Clause 62 of the Allotment letter dated 22.09.2015 whereby any dispute relating to the unit shall be settled amicably by mutual discussion falling which the same shall be settled through arbitration. Thus, this Authority has no jurisdiction to try and entertain the instant complaint. The learned Counsel for the respondent further relied upon Clause 40(g) of the Allotment letter whereby for reasons due to 'force majeure' the respondent on demand by the complainant refund the money after

compliance of certain formalities by the allottee (complainant). The learned Counsel for the respondent further emphasized on the part of the complainant regarding default/delay in payment as per the schedule of payments, resultantly the date of handing over possession shall be extended accordingly and also attached copies of various reminders/letters issued by the respondent to the complainant for payment of due installments (Annexure R-2 Colly). Due to non-payment by the complainant in accordance with the payment plan the respondent had to suffer immense losses. The respondent has spent hundred crores of rupees in order to complete the project. The learned Counsel for the respondent further stated that as per para 8 of his reply dated 17.01.2024 wherein it is specifically mentioned that *'in the event of failure of the Respondent company to handover possession by due time, clause 40(g) of the allotment letter will be enforced and in view thereof, the Respondent company is liable to make compensation of Rs.5/- per square feet per month for the entire delayed period...'*. The learned Counsel for the respondent further argued that since the complainant booked the unit under subvention scheme, the respondent has paid a sum of Rs.35,64,435.99 to the complainant towards pre-EMIs on the loan availed by the complainant. It is stated by him that in case the interest is going to be allowed in favour of the complainant for the period of delay in handing over possession, then the amount of Rs.35,64,435.99 already paid to the complainant towards pre-EMIs be set off from the due interest. To support his case, the learned Counsel for the respondent placed on file two orders passed by this Authority, one on 26.03.2021 in GC No.199 of 2019 titled "*Baljinder Kaur Vs Sushma Buildtech*" and on 06.05.2024 in GC No.0135 of 2022 titled "*Vikrant Tyagi Vs M/s Omaxe Chandigarh Extension Development Pvt.*

Ltd.". Both these matters relate to subvention scheme and it was held in both these cases that whatever amount paid by the respondent on behalf of the allottee to the bank under subvention scheme, shall be set off against the interest to be paid to the complainant by the respondent under Section 18 of the Act.

12. The undersigned considered the pleadings and arguments of the parties and also gone through the record available on the file.

13. There is no dispute about issuance of allotment letter dated 22.09.2015 to the complainant allotting Unit No. TLC/CASPEAN-E/18/1802, having Carpet area of 1920 Sq. Ft. / 178.37 Sq. Mtr. in the project "THE LAKE", situated at OMAXE New Chandigarh; total cost of the unit to be Rs.96,85,392/- and payment of Rs.77,64,356.00 by the complainant to the respondent for the purchase of above unit.

14. Regarding the objection about the presence of clause of arbitration in the Allotment letter being used to exclude the jurisdiction of the Authority, this contention is rejected in line with the decision of the Supreme Court in the case "M/s Emaar MGF Land Ltd. vs Aftab Singh" (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos.23512-23513 of 2017).

15. The claim of the complainant as per Clause 40(a) of the allotment letter is that the date of possession is 36 months from the date of signing of the allotment letter. The allotment letter is dated 22.09.2015 so the date of possession was to be 21.09.2018. For the sake of reference, the relevant portion of Clause 40(a) is reproduced below:

"40(a) The Company shall try to complete to development/construction of the Unit/Project within 36 (Thirty Six) months from the date of signing of this Allotment Letter by

the Allottee(s) or approval of the building plans, whichever is later and within such further extended grace period of 6 (Six) months. Completion of development of the Unit within such 42 (Forty Two) months is subject to force majeure conditions [as mentioned in Clause (b) hereunder] and subject to timely payment by the Unit Allottee(s) or subject to any other reasons beyond the control of the Company.

16. It is apparent on record that the allotment letter dated 22.09.2015 is signed by the complainant as well as the authorised representative of the respondent. For the sake of ready reference relevant portion of Condition no.3 of the allotment letter is reproduced below:-

"3. The Allottee(s) after cautiously analyzing this Allotment Letter hereby confirms that the terms and conditions mentioned herein are the same as mutually decided and agreed between the Allottee(s) and the Company at the time of booking....."

17. The respondent has cited judicial pronouncements of the Hon'ble Supreme Court in the matters of (i) *Secretary, Bhubaneswar Development Authority*; (ii) *PUDA (Chief Administrator)* and (iii) *Bharati Knitting Company, (supra)* wherein it was held the parties are bound by the unchallenged terms of the contract/ allotment letter.

18. It is also the case of the respondent that there was delay in making payment of the due installments by the complainants despite issuance of reminders/letters to them (Annexure R-2 Colly). On the other hand, it is the case of the complainant that all the payments were made on time. However, no documentary evidence in the shape of receipts of making payment by the complainant to the respondent has been annexed with the complaint nor produced at the time of arguments of this case. Even there is no rebuttal in the submission/rejoinder submitted by the complainant of this contention which has been raised by the respondent in his reply as well as during the course of arguments

that the complainant did not make payments on time and they were forced to issue reminders (Annexure R-2). Thus, in view of the Clause 40(a) of the allotment letter; and judicial pronouncements quoted above it is held that the date of possession is 21.03.2019 instead of 21.09.2018.

19. The next contention raised on behalf of the respondent is that compensation for the delay can be made only at the rate of Rs.5/- per month per sq. ft. and not by way of payment of interest to the complainant. He has relied upon Clause 35 of the allotment letter dated 22.09.2015. For the sake of reference, relevant portion of Clause 35 of the allis reproduced below:

"..However, in exceptional circumstances the Company may, in its absolute discretion, condone the delay in payment by charging penal interest at the rate of 18% p.a. on the amount outstanding up to one month delay from the due date of outstanding and at the rate of 24% per annum thereafter on all outstanding dues from their respective due dates...."

20. This argument cannot be accepted as valid in the light of the Hon'ble Supreme Court orders in the cases of '*Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan*' (Civil Appeal No.12238 of 2018) and *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Vs DLF Southern Homes Pvt. Ltd.*' (Civil Appeal No.6239 of 2019). The present case is squarely covered within the ambit of these judgements. As per the allotment letter, while the respondent was obliged to pay only Rs.5/- per month per sq. ft for the period of delay, the complainant was required to pay penal interest at the rate of 18% and then 24% per annum in case of delay in making payments. Such one-sided agreement cannot obviously be upheld.

21. The next argument of the learned Counsel for the respondent is that the Unit was under subvention scheme and as per this scheme, the respondent had paid Rs.35,64,435.99 towards Pre – EMIs on the loan availed by the complainant, either directly to the lender bank or by way of reimbursement to the complainant. The amount was never denied by the complainant either in rejoinder or during the arguments. It is the prayer of the respondent that in case the interest is going to be allowed in favour of the complainant for the period of delay in handing over possession of the unit, then this amount of Rs.35,64,435.99 paid by the respondent to the bank towards Pre – EMIs on the loan availed by the complainant be set off from the due interest and to support his case, he has also cited two orders 'Baljinder Kaur Vs Sushma Buildtech' and 'Vikrant Tyagi Vs. Omaxe Chandigarh Extension Development Pvt. Ltd.'" in this behalf.

22. From the above discussion, it is held that the complainant is entitled for the payment of the interest as per 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, 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)"

Mr

23. In view of the above discussion, this complainant is entitled to the following reliefs:

- i. The 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 of Rs.77,64,356/- paid by the complainant w.e.f 21.03.2019 till the date of this order and in the first instance, the arrear of interest would be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order.
- ii. The amount paid by the respondent on behalf of the allottee(complainant) to the bank under the Subvention Scheme shall be set off against the interest to be paid to the complainant by the respondent under Section 18 of the Act.
- iii. The respondent is further directed to pay interest under Section 18(1) of the Act 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 from the date of this order till the date of delivery of valid possession of the Unit No. TLC/CASPEAN-E/18/1802, having Carpet area of 1920 Sq. Ft. / 178.37 Sq. Mtr. in the project "THE LAKE", situated at OMAXE New Chandigarh and submit the compliance report accordingly.

24. It may be noteworthy that in case compliance report is not submitted by the respondent after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act of 2016.

25. The complainant is also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

26. Further, the complainant is bound to pay the outstanding amount, if any, before taking the 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 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".

27. As far as the claim of litigation cost of Rs.1,50,000/- is concerned, the complainant has not raised this issue during the course of arguments, hence being not adjudicated upon.

28. Regarding the prayer of the complainant to punish the respondent under Section 61 of the Act of 2016 for violating Section 13 and Section 8 of the Act, the learned Counsel for the complainant was unable to support his case on this account. Section 13 is to the effect that the promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot or building. He has not pointed out any payment which is more than 10% of the total price of the unit paid by him in his complaint or during the course of arguments. The allotment letter is dated 22.09.2015 and certain Sections of the Act were promulgated w.e.f 01.05.2016 and thereafter remaining Sections w.e.f

01.05.2017 which includes Section 13 of the Act of 2016. The Act is prospective in nature. Further, regarding the prayer to take action under Section 8 of the Act of 2016 as the registration of the project has been lapsed, it is to be noted that as per registration branch vide Memo No.6304 dated 21.06.2024 the promoter was granted extension under Section 8 of the Act of 2016 upto 31.12.2024. The respondent has already submitted an application under Section 8 of the Act with this Authority for grant of further extension.

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

Announced


(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab