

**BEFORE Sh. Arunvir Vashista, Member-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/ GC No.0330 of 2023

Date of filing: 19.09.2023

Date of decision: **30.07.2025**

Harihara Murthy Sudheer # 365 Panchkula, Haryana.

...Complainant

Versus

Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade
Tower, First Floor, Mullanpur, New Chandigarh, Mullanpur District
Sahibzada Ajit Singh Nagar (Mohali) Punjab

... Respondent

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


Present: Advocate Mohd. Sartaj Khan, representative for the
complainant
Sh. Tejeshwar Singh, Advocate, representative for the
respondent

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 respondent.

2. The brief facts as per averments in the complaint are that
complainant had booked a residential unit No. TLC/ Mystic-
C/Fifteenth/1504 having Carpet area measuring 1285 Sq. ft./119.38
Sq. Meters in the project 'The Lake' of respondent and paid a sum of
Rs.5,00,000/- as booking amount. Accordingly, the said unit was
allotted to the complainant vide allotment-cum-buyer's agreement

dated 19.08.2015. The basic sale price of the unit in question was Rs.62,14,088/-, out of which complainant had already paid an amount of Rs.54,68,350/- i.e. more than 90% of the total sale price of the said unit. The possession of the unit in question was to be delivered within 36 months i.e. on or before 19.08.2018 from the date of signing of the allotment-cum- buyers' agreement. The respondent promoter however failed to offer the possession of the unit in question as per stipulation in the allotment-cum-buyer's agreement and the project was nowhere near completion and the same had been unreasonably delayed by the respondent promoter without any justification. The complainant ultimately being dissatisfied called upon the promoter to pay interest for delayed period on the amount paid by the complainant till valid offer of possession is made, as per the provisions of the RERA Act, but to no effect. Hence, the present complaint.



3. Upon notice, respondent-promoter filed written reply contesting the complaint by taking preliminary objections on the ground of limitation, non-joinder of necessary party, concealment of material facts, estoppel and cause of action. On merit, booking of the unit in question by the complainant in the project of the case in hand has been admitted and it was submitted that possession was to be delivered within a total period of 42 months, 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

further 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 his claim and the complaint therefore was not maintainable. It was further 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. Complainants filed rejoinder and broadly reiterated the contents of the complaint.

5. While reiterating the contents of complaint, learned counsel for the complainant argued that the complainant was earlier allotted one residential unit in the project of the case in hand vide allotment-cum-buyer's agreement dated 19.08.2015, by paying booking amount of Rs.5 lacs. The complainant had already paid an amount of Rs.54,68,350/- out of the total sale price of the unit amounting to Rs.62,14,088/- i.e. more than 90 % of the sale consideration. He further argued that the possession of the unit in question was to be delivered within 36 months i.e. on or before 19.08.2018 from the date of signing of the allotment-cum-buyer's agreement. However, the project was nowhere near completion and even no completion certificate was received by the respondent from the competent authorities. The prayer of the complainant is for issuance of direction to the respondent to pay interest for delayed period on the amount paid by the complainant till valid offer of possession is made, as per the provisions of the RERD Act.

6. On the other hand, learned counsel for respondent reiterated the legal contentions noted above. He further contended that the allotment-cum-buyer's agreement dated 19.08.2015 did not contain any provision for payment of interest. At the best the complainants could have sought refund of the money paid by them but this course of action had not been adopted and the payment of interest therefore was not warranted in law. The complaint being without merit deserves to be dismissed.


7. This authority has carefully considered the rival contentions of both the parties and perused the record of the case.

8. Certain facts were undisputed between the parties like booking of residential unit in the project of the case in hand by the complainant, its allotment and payment of Rs.54,68,350/- by the complainant to the respondent as well as execution of allotment-cum-buyer's agreement 19.08.2015 in favour of the complainant. The total sale consideration of the unit in question was Rs.62,14,088, out of which complainant had already paid more than 90% of the total sale price of the said unit. As per clause 40(a) of the agreement the due date for delivery of possession was within 36 months i.e. on or before 19.08.2018 from the date of signing of the allotment letter dated 19.08.2015. The respondent-promoter however failed to offer the possession of the unit in question as per stipulation in the allotment-cum-buyer's agreement. It is a futile argument on the part of respondent that they had been making offer of possession of the apartment in question to complainant but it was complainants who failed to come forward to take the possession and rather committed default in making payments of instalments. As has been categorically

observed by the Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, Civil Appeal Nos.2809-2810 of 2024 decided on 6 September, 2024** that in the absence of requisite completion certificate the offer of possession even if made is not valid one. In the case in hand, no completion certificate was of course there with the promoter. As such even if any offer allegedly made by the respondent for delivery of possession in an incomplete project was not a valid offer as has been observed by Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, (Supra)**.

9. In view of above discussion, the complaint is accepted and the respondent is directed to pay interest on the amount paid by the complainant @ 11.10% per annum (today's highest MCLR rate of 9.10% plus 2%) as per the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 w.e.f. 19.08.2018 till a valid offer of possession is made by the respondent. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

**Announced:
30.07.2025**


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

Hasrihara Murthy Sudheer

Vs.


Omaxe Chandigarh Extension Developers Pvt. Ltd.

Complaint No. RERA/ GC No.0330 of 2023

Present: Advocate Mohd. Sartaj Khan, representative for the complainant
Sh. Tejeshwar Singh, Advocate, representative for the respondent

Vide my separate order of date, the complaint has been allowed. A copy of this order be provided to both the parties free of costs. File be consigned to record room after necessary compliance as per rules.

Announced:
30.07.2025


(Arunvir Vashista),
Member, RERA, Punjab