

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

Complaint No. 0205 of 2024
Date of Institution : 06.06.2024
Date of Decision: 06.08.2025

1. Late Dhanbir Singh, through LRs.
2. Amarjeet Kour
3. Pardeep Singh

Residents of H.No.36, Sector 14, Nanak Nagar, Gandhi Nagar, Jammu,
Jammu and Kashmir, Pin Code 180004

....Complainants

Versus

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

....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-PR0040)

Present: Shri Shubhnit Hans, Advocate for the complainants
Shri Sanjeev Sharma, and Shri Vishal Singal, Advocates for the
respondent

ORDER

Complainants seek directions to respondent to handover physical
possession of residential flat and also to pay interest at the rate of SBI's
MCLR + 2% as per the Act of 2016 on the amount paid by complainants from
the agreed date of possession till the date of realization.

2. Complainants submitted the following in the complaint which is
summarized below:-

2.1 Complainants purchased a 3BHK residential flat bearing
No.TLC/CASPEAN-A/TWELFTH-A/12A03 in the project "THE
LAKE" for a total sale consideration of Rs.51,10,770/- having
super area admeasuring approximately 1820 sq. ft., which was
later on increased to 1855 sq. ft. also increasing the total sale
consideration to Rs.52,58,448/-.

2.2 The allotment letter was issued on 06.04.2015. The first allottee
i.e., Late Sh. Dhanbir Singh had died on 11.03.2022 leaving

behind his legal heirs i.e Amarjeet Kour, Wife and Pardeep Singh, Son who are also the co-allottees of the residential flat.

- 2.3 Complainants had till now paid a total sum of Rs.41,31,616/- which is admitted by respondent in the Statement of Account issued on 10.05.2024.
- 2.4 As per Clause 40(a) of the allotment letter possession of the residential flat was to be delivered within 42 months from the date of its signing by the allottees or approval of the building plans i.e by 06.10.2018 with further extended grace period of 6 months. However, despite lapse of more than 9 years, respondent has been unable to hand over possession of residential flat till date.
- 2.5 Respondent increased price of the flat by Rs.1,47,678/- unilaterally for increasing the total area by 35 sq. ft. and now the total value of the residential flat has been fixed to Rs.52,58,448/- . Respondent is charging high rate of interest of 18% in case of delay in instalments, however, in case of its default for delay in handing over possession offering a meagre amount of Rs.5 per sq./ft. per month.
- 2.6 It is the prayer of complainants to direct respondent to hand over possession of the residential flat as well as to pay interest for the period of delay in handing over its possession.

3. Upon notice, Shri Sanjeev Sharma, Advocate appeared on behalf of respondent and submitted reply dated 25.12.2024 vide this Authority's Diary No.568 on 28.01.2025 which is summarized below:-

- 3.1 Respondent admitted allotment of residential flat No.TLC/CASPEAN-A/TWELFTH-A/12A03 to complainants in the project "THE LAKE" vide allotment letter on 06.04.2015 and also extended discount of Rs.3,35,790/- on assurance to make timely payment which they failed to honour.

- 3.2 The delay in handing over possession is due to unavoidable circumstances including consistent delays by complainants in making payments and *force majeure* conditions by Covid-19. Respondent sent several reminders (Annexure R-3-colly). Respondent relied upon judgement of "*Ramesh Kumar Vs Omaxe Limited*," decided on 10.05.2023 by the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh extending the timeline due to Covid-19 *force majeure* for offering possession.
- 3.3 Respondent denied the claim of complainants that they illegally charged Rs.1,47,678/- towards increased area of 35 sq. ft.
- 3.4 Respondent obtained Partial Completion Certificate (Annexure R-4) from Greater Mohali Area Development Authority, which shows the bona fide of respondent in ensuring progress of project and its readiness to hand over possession in a phased and lawful manner. There is outstanding of Rs.11,80,898/- payable by complainants as per statement of account attached with offer of possession letter dated 21.06.2024 (Annexure R-5) given to complainants to facilitate the handing over of possession of residential flat. Despite offer of possession, complainants failed to fulfil their financial obligations by making timely payments which delayed the process of final possession.
- 3.5 It is also contended that complainants be directed to produce the Succession Certificate from a Civil Court Administration and other competent jurisdiction.
4. Counsel for the complainants submitted rejoinder dated 21.03.2025 reiterating the contents of his complaint and denied the averments raised by respondent in its reply. It is added that the judgements cited by respondent i.e "*Imperia Structure Ltd and Anil Patni and ors.*" and "*Jaswinder Singh Vs Omaxe Chandigarh Extension Pvt. Ltd.*" are directly relevant to the case of complainants as their prayers are for possession of residential flat and also

payment of interest on delayed possession till valid offer of possession after obtaining Completion/Occupancy Certificate. Respondent is not entitled for any relief on the ground of Covid-19 as it was with effect from March 2020 onwards whereas possession was to be delivered earlier to that period. The demand of respondent towards increased area is an arbitrary demand and no discount was extended to complainants. Possession was to be handed over on or before 06.10.2018 but was offered after a delay of 5 years and 8 months on 21.06.2024 that too for carrying out fit-outs and was not lawful. Respondent failed to obtain requisite Completion/Occupancy Certificate for 'CASPIAN-A' without which offer of possession cannot be considered lawful. Complainants denied that they defaulted in timely payments and if there was any delay that was for few days and negligible. It is further contended that demand of Rs.1,47,678/- for unilaterally increased area raising the total sale consideration to Rs.51,10,770/- is not justified as complainants have already paid Rs.41,31,616/-. Regarding the objection about legal heirs, complainants have already attached Annexure C-4, a legal heir certificate issued on 12.05.2023 by the Tehsildar, Bahu, Government of Union Territory of Jammu and Kashmir. It is the prayer of the complainants that they are entitled for the reliefs as prayed for.

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

6. Counsel for the complainants argued on the lines of his complaint as well as rejoinder. He stated that the demand of Rs.1,47,678/- towards increased area of 35 sq. ft is unilateral. Complainants had already deposited Rs.41,31,616/- and the offer of possession sent by respondent was only for fit-outs without accompanying completion/occupancy certificate, thus not as per law. He further argued that possession was to be handed over on or before 06.10.2018 but till today valid offer has not been made by respondent thus complainants are entitled for payment of interest for the period of delay till the date of handing over possession.

7. On the other hand, it is argued by respondent that there were delays on the part of complainants of payments, due to which the delay in handing over possession has occurred. Respondent offered possession but complainants did not come forward to take it. Complainants had still to pay more than Rs.11.80 lakhs to respondent. It is further argued that respondent had obtained Occupancy Certificate on 26.11.2024 from Greater Mohali Area Development Authority (GMADA) and the same is available on record of this complaint submitted by filing separate application dated 02.07.2025 by respondent.

8. The undersigned considered the arguments of both the counsels and also perused the available record of this complaint.

9. Complainants stated that possession of the residential flat was to be handed over to them on or before 06.10.2018. However, perusal of clause 40(a) of the allotment letter dated 06.04.2015 revealed that possession was to be handed over to complainants within 42 months plus extended grace period of six months i.e. 48 months which is on or before 05.04.2019. Keeping in view of the onset of Covid-19 pandemic, delay in payments and adherence of other rules and regulations, the grace period of six months, as agreed between the complainant and respondent is considered and accordingly, the due date of delivery of possession of the unit under consideration is taken as 05.04.2019.

10. Respondent stated that they have sent offer of possession of residential flat to complainants on 21.06.2024. However, perusal of this offer of possession would reveal that it was for carrying out fit-outs only and not accompanied by any Completion/Occupancy Certificate. Perusal of record shows that vide application dated 02.07.2025 respondent has placed on record a copy of Occupancy Certificate dated 26.11.2024 issued by GMADA. Thus, the offer of possession issued by respondent on 21.06.2024 itself is no

valid offer of possession. It is further the case of complainants that till today they have not received any valid offer of possession accompanying with said Occupancy Certificate dated 26.11.2024. Any offer of possession without having Completion/Occupancy Certificate is *void ab initio* unless it is accepted by the allottee.

11. It is further the case of complainants that respondent has levied Rs.1,47,616/- towards increased area of 35 sq. ft which is unilateral.

12. Clauses 5 and 7 of allotment letter dated 06.04.2015, signed by both parties, are reproduced below for the sake of convenience :-

"5. The Allottee(s) confirms that he has also seen and understood the tentative plans, designs, and specifications of the said Unit/ Project which are subject to approval of the sanctioning authority and agrees to the same. He also agrees that the Company shall be entitled to effect such variations, modifications, additions, alterations etc. therein as may be necessary for optimum utilization of saleable area or as it may, in its sole discretion consider proper in the best interest of the said Project or as may be approved/required by the said Authority or any other authority/authorities, Govt. agencies or the Architect of the Project without any objection from him/them and it shall not be obligatory on part of the Company to seek consent of the Allottee(s) for the said purpose. The necessary changes/alterations may involve change in position, location, orientation, number, dimensions, area, Unit etc. of the said Unit. Further, the Allottee(s) understands and agrees that notwithstanding anything contained hereinafter finalization of position, location, orientation, number, dimensions, area, Unit etc. of the said Unit (if revised), the Conveyance Deed of the said finalized Unit shall be executed and registered in favour of the Allottee(s) as per applicable law".

7. The Allottee(s) agrees that he shall pay the price of the said Unit and other charges calculated on the basis of super area vis-à-vis Unit area, which is understood to include pro-rata share of the common areas in the Project. The Super Area of the said Unit means the covered area of the said Unit including the entire area enclosed by its periphery walls including area under walls, columns, balconies and lofts etc. and half the area of common walls with other premises/ Units which form integral part of said Unit and Common areas shall mean all such parts/ areas in the entire said Project which the Allottee(s) shall use by sharing with other occupants of the said Project including entrance lobby, electrical shafts, fire shafts, plumbing shafts and service ledges on all Units, common corridors and passages, staircases, munties, services areas including but not limited to machine room, security/ fire control rooms, maintenance offices/ stores etc., if provided".

13. The above said clauses show that complainants have already agreed that the respondent shall be entitled to effect such variations, modifications, additions, alterations etc. therein as may be necessary for optimum utilization of saleable area and that complainants shall pay the price of the said Unit and other charges calculated on the basis of super area vis-à-vis Unit area. This increased area of 35 sq. ft will be within possession of complainants and they will use this area which shall remain in their possession exclusively forever. Further, the increase in area of 35 sq. ft is approximately 2% of 1820 sq. ft which is within the reasonable limit. It was also noted that the increase of amount for the additional 35 sq. ft has been charged at the same rate on which the agreement was entered earlier. Thus, it is held that complainants are liable to pay Rs.1,47,616/- towards the increase of 35 sq. ft area to respondent which is charged at par with the rate of the unit as per agreement.

14. Further, the objection about Covid-19 raised by respondent and in support relied upon order dated 10.05.2023 in "*Ramesh Kumar*" (supra) is rejected as in the preceding para it has been held that possession of residential flat was to be handed over on or before 05.04.2019 which is much earlier to declaration of Covid-19 which commenced from March 2020 onwards. The respondent has been already allowed grace period in preceding paragraph.

15. It is established on record that there is delay on the part of respondent in handing over possession of 3BHK residential flat bearing No.TLC/CASPEAN-A/TWELFTH-A/12A03 in the project "THE LAKE" to complainants despite making payment of more than Rs.43,57,211.53 (as reflected in the calculation dated 27.06.2025 prepared by "Hans Ravit and Associates, Chartered Accountant", Karnal placed on record by complainants) which was to be handed over on or before 05.04.2019. Now it is also a matter

of record that respondent had obtained Occupancy Certificate on 26.11.2014 vide Memo No.GMADA-E.O./2024/GMADA/24-25/PIO/5 issued by GMADA.

16. In view of above discussion, this complaint is allowed and respondent is directed

16.1 to pay interest on the amount of Rs.43,57,211.53 along with interest 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 with effect from 05.04.2019 till 25.01.2025 (date of issue of OC is 26.11.2024 + 2 months), in view of Section 19(10) of the Act of 2016 where it has been mandated that "every allottee shall take physical possession of the apartment within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be".

16.2 Complainant to pay the balance amount of sale consideration if the same is not adjusted with the interest as mentioned in para 16.1.

16.3 Complainants are also liable to pay a sum of Rs.1,47,616/- towards the increase of 35 sq. ft area to respondent.

16.4 As noted above since respondent has already obtained Occupancy Certificate on 26.11.2024 and a copy thereof is available on record of this complaint, the complainants can obtain the copy from the respondent, or from this office, if required and take possession of their residential flat without further delay.

17. Further, complainants are bound to pay the outstanding amount, if any, before taking possession of the said residential flat 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".

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



(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab