

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

Complaint No. GC No. 0381 of 2023UR
Date of Institution: 15.07.2022
Dated of Decision: 16.02.2026

ABHINAV MITTAL, House No 7-E, New Lal Bagh Colony, Patiala,
Punjab-147001

....Complainant

Versus

1. The Estate Officer, Patiala Urban Planning Development Authority,
Urban Estate, Phase II, Patiala, Punjab
2. M/s Omaxe Limited Through its Director/MD Omaxe House no. 7,
Behind Kalkaji Post Office, Kalkaji LSC, New Delhi-110019

....Respondents

- Present:
1. Shri J P Singla, in person for the complainant
 2. Sh Bhupinder Singh and Sh Ashish Grover, Advocate
for the respondent no. 1
 3. Sh Manjinder Singh, Advocate for the respondent
no.2

ORDER

1. 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 15.07.2022 by the complainants

in their individual capacity against the respondent relating to an *Un-Registered Project* 'PDA - Omaxe City' Sirhind Road, Baran, Patiala seeking following reliefs:

- 1.1 The respondents may kindly be directed to refund the amounts paid by the complainant along with interest @ 12 % (compoundable annually).
2. The brief gist of the complaint, as alleged by the complainant, is that the complainant allotted Flat No. G.F-1, Block Lotus Cluster-E, through allotment letter no. 2876 dated 20.12.2010., after being lured by the respondents' advertisement in *Punjabi Tribune* dated 27.04.2010. Despite depositing ₹5,37,187/- against the tentative price of ₹3,24,028/-, possession, which was to be delivered by 19.12.2013 as per the allotment letter, has not been given till date; rather, even construction work has not commenced due to termination of the development agreement with M/s Omaxe Ltd (Respondent no.2) on 20.06.2011 after only 29% work was completed. In view of the inordinate delay of over nine years, non-provision of basic amenities, failure to register the project with RERA, and denial of his genuine claim despite legal notice, the complainant, having invested his life savings, prays for refund of the deposited amount along with interest.
3. In response to the complaint, respondent no. 1 filed its reply stating therein that

3.1 A joint development Agreement dated 16.11.2006 was executed between the respondent-1(PDA) and respondent-2(OMAXE Ltd). As per agreement, respondent-1 is solely responsible for the fulfillment of the employment criteria. The delay in handing over the possession to the allottees has been on account of the failure of Respondent No.2 to fulfill obligations and adhere to the time-schedules prescribed in the said agreement for the execution/implementation of development works. As per above said agreement, Respondent No.2 was under obligation to ensure the provision of water, electricity, sewerage, storm water, solid waste management and facilities/amenities to the said project, within 24 months of the effective date of this agreement. It was the sole responsibility of respondent no. 2 to complete the project within 48 months from the date of commencement. Vide dated 18.07.2007, Respondent no. 2 has assured to complete the development work of residential pocket within a period of 2 years from allotment of plot/flat and in case of delayed development beyond 2 years, then all liabilities and responsibilities arising therefrom shall be borne by respondent no. 2. Based on this assurance, respondent no. 1 conducted the draw of lots for the allotment of 960 nos. of EWS flat on 28.07.2010.

3.2 The respondents further submit that the provisions of RERA came into force prospectively from 01.05.2016/01.05.2017 and do not apply retrospectively, while the project in question was launched much

earlier under the Punjab Regional and Town Planning and Development Act, 1995. PDA had in fact applied for registration of the project in 2017, but the application was rejected in 2018 as no specific timeline for completion could be given due to ongoing disputes with M/s Omaxe Ltd., the developer, and pending litigation before the Hon'ble High Court and Supreme Court. It is contended that development was stalled on account of stay orders in CWP No. 8100 of 2011 (till 2013), subsequent land reference cases (decided in 2018), and ongoing writ petitions, while PDA had terminated the Joint Development Agreement with M/s Omaxe Ltd for breach in 2011. The complainant, has also defaulted in depositing enhanced land compensation demanded vide letters dated 22.07.2014, 17.05.2017, 20.06.2019, 16.02.2021 and 23.12.2021. Respondent reply dated 14.10.2021 on receipt of the alleged legal notice dated 01.10.2021 and also contend that allegations of deficiency in service or unfair trade practice are baseless. They assert that the complaint is not maintainable in view of (i) alternative remedies under Section 45 of PRTPDA, (ii) arbitration clause in the allotment letter, (iii) exemption available to PDA as a statutory authority under PAPRA, and (iv) pendency of related disputes before the Hon'ble High Court. Hence, the complaint is claimed to be devoid of merit and liable to dismissal.

3.3 Further, respondent stated that the complainant has written a letter dated 07.11.2022 for surrender the flat and refund of the deposited

amount and the said request has been considered by the respondent no.1 and vide order dated 18.01.2023(Annexure R-8) refund of Rs 4,64,286/- has been passed after deducting Rs.51,453/- from the deposited amount of Rs.5,15,719/-(Annexure R-9). The refund of amount deposited by the complainant has been considered as per term and condition of allotment which was accepted by the complainant and there is no provision to give the interest as claimed by the complainant.

4. Respondent No. 2 (the developer) submits that it had mobilized resources and commenced development under the JDA with PDA but was obstructed by unforeseen circumstances such as delays in statutory approvals, legal disputes, and the stay order passed in CWP No. 8100 of 2011 by the Hon'ble Punjab & Haryana High Court, which stalled construction. It contends that the delay was beyond its control and not due to any willful default, and therefore it cannot be held guilty of fraud or deficiency in service. The developer challenges the maintainability of the complaint on the grounds that the sale agreement was executed in 2010, prior to the enforcement of RERA in 2016, thereby ousting the jurisdiction of this Authority, and further points to the arbitration clause in the agreement as an exclusive alternative dispute resolution mechanism. It also emphasizes that the matter is sub judice before the Hon'ble High Court and that any decision therein would directly affect the present dispute. While denying liability, the developer asserts that it has made

sincere efforts to pursue the project and is willing to comply with lawful directions, provided its rights and obligations are protected in light of the pending litigation and the original contractual framework.

5. The violations and contraventions contained in the complaint were given to the representative of the respondents to which they denied and did not plead guilty. The complaint was proceeded for further inquiry.

6. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The counsel of the complainant vide written argument dated 25.08.2023 stated that due to financial constraint the complainant vide letter dated 07.11.2022 sought refund of his deposited amount on account of no development in the project and the respondent no. 1 offered the refund of an amount of Rs.4,64,286/- which was not taken by the complainant (Annexure-R-9).

7. That representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above. I have duly considered the documents filed and written & oral submissions of the parties i.e., complainant and respondents.

8. The undisputed facts of the complaint are that the complainant was allotted Flat No. G.F-1, Cluster-E, Block Lotus, in the project PDA-Omaxe City, Sirhind Road, Baran, Patiala. The complainant deposited a

sum of ₹5,37,187/- against the tentative price of ₹3,24,028/-. As per the allotment letter, possession was to be handed over within 3 years from the date of allotment i.e. 19.12.2013. A Joint Development Agreement had been executed between PDA and M/s Omaxe Ltd. on 16.11.2006, which was terminated by PDA on 20.06.2011 after only about 29% of the work had been executed. Despite the lapse of more than nine years beyond the stipulated date of possession, the complainant has neither been delivered possession of the unit nor refunded his money. The project has remained unregistered with RERA, Punjab.

9. The complainant argued that he deposited his life savings in the project on the promise of timely possession, yet despite repeated assurances, neither possession nor refund has been made. He alleged that the respondents failed to perform their contractual and statutory obligations. He further submitted that the termination of the development agreement in 2011 and the non-registration of the project with RERA only reflect the failure of both respondents. According to him, the prolonged delay of more than nine years constitutes deficiency in service and unfair trade practice. He, therefore, prayed for refund of the deposited amount along with interest.

10. On the other hand, PDA (Respondent no.1) contended that it had entrusted the development work entirely to M/s Omaxe Ltd under the Joint Development Agreement dated 16.11.2006. On account of

Omaxe's failure to adhere to timelines, the JDA was terminated on 20.06.2011. It was further argued that the provisions of the RERD Act, 2016 came into effect prospectively from the year 2016 and 2017 and cannot be applied to agreements executed in 2010-2011. PDA maintained that the complainant accepted the transfer of the unit on the same terms and conditions, which included liability for enhanced compensation and the possibility of delay due to force majeure. PDA also raised preliminary objections as to the maintainability of the complaint on the grounds of an alternative remedy under PRTPDA, the arbitration clause in the allotment letter, statutory exemption under PAPRA, and pendency of related disputes before the Hon'ble High Court. Omaxe Ltd., for its part, submitted that development had been initiated but could not progress due to stay orders passed by the Hon'ble High Court in CWP No. 8100 of 2011, and other unforeseen statutory delays, which were beyond its control. It denied any deficiency in service or fraud, and contended that the sale agreement being pre-RERA ousts the jurisdiction of this Authority. However, arbitration clauses in agreements cannot override statutory remedies available under RERA and the same had already been decided in many cases by this Authority i.e. *GC No. 1462/2019 decided on 07.04.2021 titled as Satwant Boparai Vs. Omaxe Chandigarh Extension Developers Pvt. Ltd.*

11. After hearing both sides and examining the record, it is evident that the stipulated date for possession was 19.12.2013, yet the complainant has not been given possession to date. The delay stands admitted and cannot be justified. The plea that RERA provisions are inapplicable is not tenable because the cause of action continues until possession is delivered or refund is made. Hence, the jurisdiction of this Authority is attracted. The dispute between promoters as *inter se parties* i.e. PDA and Omaxe Ltd. cannot prejudice the rights of the complainant, who is a *bona fide* allottee. Both PDA, being the land-owning agency, and Omaxe Ltd, being the developer under the JDA, are responsible to the allottee for refund of his money. The plea of *force majeure* and pendency of litigation does not absolve the respondents of their liability, particularly when the project stands unregistered and development work has remained incomplete for more than a decade.

12. The complainant stated that the respondents have acted in bad faith by collecting substantial amounts from buyers without delivering the promised development. The refund of Rs 4,64,286/- after deducting Rs.51,453/- from the deposited amount of Rs.5,15,719/- vide order dated 18.01.2023 of the respondent no.1 was also not taken by the complainant. Even the said order is also after filing of complaint with the Authority. Hence, the complainant is entitled to a full refund with interest.

13. Further, Hon'ble Supreme Court of India, in Para 77, of its judgment in M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021. has reiterated the law declared by the court in Imperia Structures Ltd.(supra). The same is reproduced below: -

"77.The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promotor wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the regulatory authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act..."

14. As regards contention of the Respondent that complainants did not make full payment, Hon'ble Supreme Court in his judgment in M/s. Newtech Developers Pvt. Ltd. (supra) in Para 80 has held as follows:-

"80. The further submission made by learned counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the adjudicating officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making instalments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to sub-section 5 of Section 11 enables the allottee to approach the regulatory authority to question the termination or cancellation of the agreement by the promotor and thus, the interest of the promotor is equally safeguarded."

15. The respondent had the option to initiate the process for cancellation of the allotment, in case of the default committed, by the complainants. However, the same was not done and promoter itself failed to offer possession, within the agreed upon/extended period, in terms of Agreement for Sale. Hence, he is liable for refund of the entire amount paid by the complainant, alongwith prescribed rate of interest.

16. Therefore, it is held that Sh Abhinav Mittal is entitled to refund from the date of respective deposit with the respondent no.1. Further, the amount to be computed is Rs.5,37,187/-, which had been shown as payment received till in the allottee account. Therefore, it is held that Sh Abhinav Mittal is entitled for an amount of Rs.5,37,187/- as payment towards flat no. GF-1, Cluster- E, Block Lotus, and interest thereon from date of deposit with the respondent no.1.

17. Since the construction has been delayed inordinately; therefore, as per provisions of Section 18 the complainant is entitled to claim refund alongwith interest as per its choice in case of non-completion on due date. It 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) 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:

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.”

18. In view of the above, the complaint deserves to be *Allowed*. The complainant is entitled to refund of the deposited amount of ₹5,37,187/- along with interest @ 10.80% (i.e. 8.80% SBI's Highest MCLR Rate applicable as on 01.02.2026 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. Both the promoters i.e. Estate Officer, Patiala Urban Planning & Development Authority PDA and M/s. Omaxe Ltd. are held to be jointly & severally liable for payment declared under this order irrespective of their inter-se party agreement/MOU/share in the project.

19 Now, on the question as to from which date the interest should accrue on the total sale consideration amount paid i.e. liable to be refunded to the complainant, this Bench of the Authority is of the considered view that it should start from the date of respective payments made by the complainant to the respondents towards total sale consideration.

20. The respondents are directed to make the payment within 90 days from the date of receipt of this order as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 read with Rules 17 of the Punjab Real Estate (Regulation & Development) Rules, 2017. The said amount is to be collected as Land Revenue by the Competent Authorities as provided/authorized in the Punjab Land Revenue Act, 1887 read with Section 40(1) of the Real Estate (Regulation and Development) Act, 2016.

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

22. As per the provisions of sub-section (1) of Section 36 of the RERD Act, 2016; the promoter is hereby directed not to allot, book, sell or give possession to any third party of the unit/property which was allocated to the complainant(s) till all the payments payable to the complainant are fully paid to the complainant. The complainant will have its continuous lien over the said unit till the refund alongwith interest is fully paid by the promoter to the complainant as determined in this order and/or mentioned in the Decree Certificate. The promoter

is free to sell the unit in question after duly obtaining the receipt of the due payment from complainant as per this order.

23. The complainant is also directed to submit report to this Authority that they have received the interest amount as per directions issued in this order.

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

Binod Singh
16/02/26

(Binod Kumar Singh)
Member, RERA, Punjab