

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

Complaint No. GC No. 0003 of 2023UR
Date of Institution: 03.01.2023
Dated of Decision: 16.02.2026

KAJAL, House No. 538 St. No. 4, Tripuri Town, 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 03.01.2023 by the complainant in their individual capacity against the respondents 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 purchased Flat No. G.F-1, Block Marigold Cluster-E, (Sr.No.543), from original allottee, after being lured by the respondents' advertisement in *Punjabi Tribune* dated 27.04.2010. The said flat was transferred to the complainant vide transfer no. 2090 dated 01 July 2011 at the same terms and conditions at which it was allotted to the original allottee. Copy of the re-allotment letter dated 01 July, 2011 is Annexure C-3. Despite depositing ₹4,21,182/- against the tentative price of ₹3,24,028/-, possession, which was to be delivered by 28.12.2013 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 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. The complainant had already filed complaint no. Adc. 1742 of 2020UR with the Authority which was allowed by Adjudicating Officer RERA vide his order dated 12.05.2021. The respondent no. 1 filed Appeal no. 114 of 2021 before the Real Estate Appellate Tribunal Punjab who vide order dated 10.03.2022 remanded the complaint to the RERA Authority to decide the complaint as per provisions of the applicable of law (Annexure C-6). However, the said complaint was withdrawn with a liberty to file a fresh when the project is registered with the Authority (Annexure C-7). Now keeping in view of the decision of RERA on dated 27.06.2022 (Annexure C-8) to entertain complaints against unregistered projects this complaint is filed for adjudication.

4. In response to the complaint, respondent no. 1 filed its reply stating therein that:

4.1 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 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. .

4.2 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 Omaxe for breach in 2011. The complainant, having taken transfer of the flat in 2011, accepted all terms of allotment including liability for enhanced compensation and the condition that possession could be delayed on account of force majeure or reasons beyond PDA's control. The complainant has also defaulted in depositing enhanced land compensation demanded vide letters dated 16.05.2017 and 27.06.2019. Respondents deny receipt of the alleged legal notice and 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.

5. 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.

6. 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.

7. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint.

8. 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.

9. The undisputed facts of the complaint are that the complainant was re-allotted Flat No. G.F-1, Cluster-E, Block Marigold, in the project PDA-Omaxe City, Sirhind Road, Baran, Patiala. The unit was initially allotted to one Sh Tarlochan Singh and was subsequently transferred in the complainant's name on 01.07.2011 on the same terms and conditions. The complainant deposited a sum of ₹4,21,182/- 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. 28.12.2013. A Joint Development Agreement had been executed between PDA and 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 twelve 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.

10. 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 twelve years constitutes deficiency in service and unfair trade practice. He, therefore, prayed for refund of the deposited amount along with interest.

11. On the other hand, PDA (Respondent no.1) contended that it had entrusted the development work entirely to 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 PRTFDA, the arbitration clause in the allotment letter, statutory exemption under

PAPRA, and pendency of related disputes before the Hon'ble High Court. M/s 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.*

12. After hearing both sides and examining the record, it is evident that the stipulated date for possession was 28.12.2013, 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.

13. The complainant stated that the respondents have acted in bad faith by collecting substantial amounts from buyers without delivering the promised development. The complainant is entitled to a full refund with interest.

14. 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...”

15. 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 promoter and thus, the interest of the promoter is equally safeguarded."

16. 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.

17. Ms Kajal (i.e. the complainant) purchased the unit on 28.12.2011 and deposited an amount of Rs.4,21,182/-. The said transfer was duly recorded by the promoter in its record on 01.07.2011. In such a scenario when it comes for refund and interest

the subsequent allottee, it will be the principal amount paid by first (original) allotted to be considered for refund not consideration what amount has actually been paid by the second allottee. Therefore, for the purpose of refund of principal amount or amount paid by the allottee, it will be actual total payment received by promoter in the allottee's account including the subsequent allottee. Therefore, it is held that the amount paid by both the allottees in the account of the promoter in relation to sale price of the unit as per agreement is the amount to be refunded. The interest will be paid to the subsequent allottee from the date it had got the transfer in its name as allottee in the account books of the promoter which is 01.07.2011. No interest will be paid for the prior period. However, for all other purposes, it is considered the subsequent allottee had stepped into shoes of the earlier allottee and is entitled for all the rights & facilities from the date of it becoming allottee. The payment of interest will start to the subsequent allottee only from the date when it had paid the amount to the earlier allottee and/or to the promoter as the case may be.

18. The Hon'ble REAT in its Appeal No. 28 and 37 of 2021 issued vide Memo No. R.E.A.T./2022/261 dated 01.06.2022 in the case of Leela Gupta w/o Amrit Lal Gupta Vs. Bathinda Development Authority held that where the allottee filing the complaint is not the original allottee (and cited the judgment of Hon'ble Supreme Court)

observed that subsequent transferees who, inspite of delay in delivery of possession, purchases the plot from original allottee would not be entitled for compensation/interest on account of such delay on delivery of possession. It held as under:-

“12. So far as appeal No. 37 pertaining to S.C.O. site No. 2 is concerned, it is admitted that appellant is not its original allottee. She got this site transferred in her name from the original allottees Sh. Jee Ram Goyal and Smt. Rekha Singla on 04.08.2017. It has been stated above that the development work was completed on 19.10.2017 so the appellants came into picture when almost all the development work was completed. The Hon’ble Supreme Court in Civil Appeal No. 6239 of 2019 “Wg. Cdr. Arifur Rehman Khan and Aleya Sultana and others Vs DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors.” has held that the subsequent transferees who, inspite of delay in delivery of possession, purchases the plot from original allottee would not be entitled for compensation on account of such delay on delivery of possession. Moreover the appellants have not suffered the agony and harassment suffered by the original allottee because when they got SCO 2 transferred in their name when almost all the development work was completed.

13. In these circumstances the appellant of this appeal is held entitled interest for delayed possession for S.C.O. Site No. 2 from 04.08.2017 i.e. till 19.10.2017.”

19. Further, the Hon’ble High Court of Punjab and Haryana in its order vide RERA Appeal No. 6 and 12 of 2023 dated 22.11.2023 observed that it was unable to find any reason or justification to interfere with the order passed by the Real Estate Appellate Tribunal, Punjab. It held as under:-

“23. In view of the discussion made hereinabove, I am unable to find any reason or justification to interfere with the order passed by the Appellate Tribunal; there being no merit in both the appeals, thus, the same are dismissed”

20. Further, the Hon'ble Supreme Court in the case of Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh, Civil Appeal No. 7042 of 2019 explicitly held that the subsequent purchaser is entitled to interest on the refund from the date the builder acknowledged the transfer of the flat, when the purchaser stepped into the shoes of the original allottee and the builder issued the endorsement letter. For ready reference, relevant extract of the order is reproduced here under: -

"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation....."

Therefore, as discussed supra and in view of the judgment of the Hon'ble Supreme Court is held that Ms Kajal is entitled to refund subsequent to the date of 01.07.2011 which is the date from which it got the status of allottee in the records of the promoter. Further, the amount to be computed is Rs.4,21,182/-, which had been shown as payment received till in the allottee account. Therefore, it is held that Ms Kajal is entitled for an amount of Rs.4,21,182/- as payment towards flat no. GF-1, Cluster- E, Block Marigold and interest thereon from 01.07.2011.

21. 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.”

22. In view of the above, the complaint deserves to be Allowed. The complainant is entitled to refund of the deposited amount of ₹4,21,182/- 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.

23 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 allotment letter to the complainant i.e. 01.07.2011 and thereafter date of respective payments made by the complainant to the respondents towards total sale consideration till date of payment by the respondents.

24. 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.

25 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.

26. 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.

27. 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.

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

Binod Singh
16/02/26

(Binod Kumar Singh)
Member, RERA, Punjab