

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

Complaint No.0165 of 2023  
Date of Institution: 18.05.2023  
Dated of Decision: ~~17~~.02.2026

1. Shri PARMOD PRUTHI and
  2. Mrs MONIKA PRUTHI,
- Both resident of House No. 353, Sector-1, Jail Road, Urban Estate,  
Ambala, Haryana-134003

....Complainants

Versus

M/s Omaxe Chandigarh Extension Developers Pvt Ltd, Omaxe New  
Chandigarh, New Chandigarh, S.A.S Nagar, Mohali- 140901

....Respondent

- Present:
1. Shri Mohd. Sartaj Khan, Advocate, for the complainants
  2. Shri Tejeshwar Singh, Advocate, for the respondent

**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 18.05.2023 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 Respondents be directed to pay interest for the delayed possession as per RERA Rules on amount paid till the date of offer of Actual Legal Possession after obtaining OC/CC from the Competent Authority.

1.2 Respondent be directed to obtain and supply a valid OC/CC from the Competent Authority and to offer a valid legal physical possession and to execute Conveyance Deed in terms of Section 17 of RERA Act 2016 within a time bound manner.

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

1.4 The Respondents should be punished under Section 61 of The Real Estate (Regulation and Development) Act, 2016 for violating various provisions of RERA Act 2016

1.5 Any other relief that this Hon'ble Authority may deem fit and appropriate in view of the fact and circumstances of the present complaint.

2. Brief facts of the complaint as submitted by complainant are summarized below: -

2.1. The complainants had allotted a flat bearing No. TLCC/CASPEAN-E/NINTH/901, having Super Area measuring Approx. 1920 Sq. Ft. (178.37 Sq. Mtr.) in the Project name "The Lake" in Omaxe New Chandigarh at sale price of Rs.83,55,600/- vide allotment letter dated 23.11.2015 (Annexure C-3).

2.2 The complainant has executed the Tripartite Agreement dated 23.03.2017 with SBI Bank for availing a Home Loan of Rs.29,90,000/- and the complainant has opted for the construction-linked plan. Copy of the Tripartite Agreement is annexed as ANNEXURE C-1. The complainants have paid to Rs. 68,70,623/- till date and the only amount pending was to be paid at the time of Offer of Possession. Copy of Account Statement is annexed as ANNEXURE C-2.

2.3 As per the Clause 40 (a) of the allotment letter dated 23/11/2015, the possession of the unit was to be delivered by the respondent within 42 months from the date of execution of the present allotment letter i.e., till 25/06/2019. The respondent company did not offered possession till date and the project is nowhere near completion

3. Notice of the complaint was served on the respondent who has filed a detailed reply dated 09.11.2023 in the matter.

3.1. The respondent stated that the complainants approached the respondent on 01.08.2014 and submitted an application form cum pricing agreement which contained detailed terms and conditions with respect to the project and the obligations of the parties and same is annexed as Annexure R-2. However, same are not being reproduced here for the sake of brevity.

3.2. Thereafter, an allotment letter was executed between the parties on 06.07.2018 under which the complainants were allotted Flat no. 901, 9<sup>th</sup>

floor, Tower Caspean E in the residential project 'THE LAKE', situated in 'Omaxe New Chandigarh', SAS Nagar, Mohali and the same are not being reproduced here for the sake of brevity. The price of Unit was amounting Rs.83,55,600/- (not inclusive of service tax and other charges). The respondent stated that the complainant defaulted in timely payments of the Unit.

3.3 The respondent argued that period of completion under the allotment letter is not binding and reproduced the clause 40(a) page 10 of the allotment letter which state that the company shall try to complete the development/construction of the Unit/Project within 42 month from the date of signing of the allotment letter by the allottee or approval of the building plans, whichever is later and within such further extended grace period of 06 months. Further, the completion of development of the unit within 48 months is subject to force majeure conditions. The respondent stated that the calculation of period of construction should exclude the 208 Sundays, 153 public holidays and 6 months extension given by RERA for covid-19. The respondent further stated that as per allotment letter, there was an indicative period which is an approximate period within which the respondent company will try to finish the construction unless it encounters force majeure events, delayed payment by the allottee or any other reason beyond the control of the company.

3.4 The counsel of the respondent also submitted that the complainants regularly defaulted in timely payments of the Unit. As per clause 12 of the application form and clause 35 of the agreement, the respondent can condone the delay in payment by charging penal interest, further, as per section 19(7) of the RERA Act, the complainant is liable to pay interest on his delayed payments. Respondent submitted that if any interest is awarded to the complainants, the same must be adjusted against the delay interest to be charged to the complainants on account of their delays. The respondents also stated that interest can only be awarded to the complainant as per agreement between the parties as there is a specific clause already agreed upon between the parties. Clause 40(g) and (j) of the allotment letter stated that in case of respondent company being unable to give possession within 48 months from date of execution of allotment letter, a compensation of Rs.5/- per Sq feet of the booked build up area or revised build up area of the said unit, whichever is lesser, per month for the period of such delay will be given.

3.5 The respondent submitted that the present complaint deserves to be dismissed on the following grounds such non-joinder of State Bank of India as party, concealment of facts, barred by limitation, an Arbitration clause exists in the agreement and Doctrine of Estoppel as complainant accepted all the terms of the Application form.

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

5. 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 on 23.01.2026. Further, counsel of the respondent submitted the delayed interest sheet and the same is handed over to proxy counsel appeared on behalf of the complaint on the last date of hearing i.e. 23.01.2026. Matter is reserved for detailed order.

6. The complainants were allotted flat bearing No. TLC/CASPEAN-E/NINTH/901 having Super Area of 1920 Sq. Ft. (178.37 Sq. Mtr.), in the Project named "THE LAKE", having RERA Registration No. PBRERA-SAS80-PM0164 situated at Omaxe New Chandigarh. As per allotment letter dated 23.11.2015, the total price of the unit is Rs.83,55,600/-. The date of possession is 23.11.2019. Till date no offer of legal possession is offered to the complaints by the promoter. Total payment Rs.68,70,623/- is made till date. As noted above valid possession was to be handed over to the complainant on or before 22.11.2019 and it is apparent on record that there is more than 4 years delay.

6.1 The plea of the respondent that the complainants have also make payment after due date. The contention of the respondent is partly acceptable i.e interest amounting Rs.12,439/- which pertains to the period before due date of possession can be adjusted against interest payable to the complainant by the respondent but delay interest on the payments pertains to dates which falls after due date of possession i.e. 22.11.2019 is not allowed to set off against the interest payment made by the respondent to the complainant.

6.2 Regarding the further objection of the respondent that the present complaint is bad for non-joinder of the Bank from where the complainant has availed loan. It is the case of the complainant that he is seeking possession along with interest for the period of delay and not refund of the amount deposited by him. In case he was seeking refund then the bank was a necessary party and not in the case of seeking possession along with interest for the period of delay. It is held accordingly. The respondent argument regarding exclusion of Sundays and holidays from the construction period is not acceptable and justifiable as the construction period had been mentioned in the allotment letter after considering the holidays on account of sundays and national holidays.

6.3 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.**

6.4 The respondent also argued that pandemic of Covid-19, which occurred with effect from March 2020 onwards and possession as claimed by complainants was to be handed over on 22.11.2019 (48 months from date of allotment letter) and it is established on record that till today possession of unit has not been handed over to the complainant. Regarding the pandemic of Covid-19, due to which respondent was not able to give possession of the Unit to the complainant is without any substance as the date of possession was 22.11.2019 and the pandemic was start from March 2020 onward i.e after due date of possession. Hence non-performance of the promoter cannot be condoned due to Covid-19 lockdown in March-2020 in India. Further, incorporation of one-sided and unreasonable clause in the Apartment Buyer's Agreement constitutes unfair trade practices as held by the Hon'ble Supreme Court decision titled 'Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna, civil appeal no. 5785 of 2019.

6.5 The issue of cost of litigation has not been pressed during the course of arguments, so it is not being adjudicated upon.

6.6 From the above discussion, it is evidently clear that there is a delay of several months on the part of the respondent in handing over possession of the flat to the complainant. Thus, the complainant is entitled for interest, as

prescribed in Section 18(1) of the Act of 2016, for the period of the delay in handing over possession of the flat in question.

Section 18(1) of the Act of 2016 is reproduced 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) ...."*

6.5 As a result of the above discussion, this complaint is accordingly partly accepted. The undersigned is of the considered view that complainants are entitled for the receipt of interest from the respondent for the period of delay in handing over possession.

7. As a net result of the above discussion, this complaint is accordingly partly allowed and respondents are directed to:

7.1 To issue Offer of Possession letter in writing to the complainant within the time stipulated as per term and condition mentioned in column 40(a) of

the 'allotment letter' dated 23.11.2015 after receiving the completion certificate from the competent authority.

7.2. As a net result of the above discussion, this complaint is accordingly allowed and respondent is directed to pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant w.e.f. 22.11.2019 the date agreed for handing over possession, the arrear of interest be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 to the date of this order.

7.3 Respondent is further directed to pay interest under Section 18(1) of the Act of 2016 at the rate of 10.70% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.70% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by complainants from the date of this order till the date of delivery of legal valid possession of the flat bearing No. RNC/TOWER4/SECOND/204, type-3 BHK on 2<sup>nd</sup> floor in Tower-4 of the project namely "The Resort, Part-A" being developed by respondent at Omaxe, New Chandigarh, Punjab and submit the compliance report.

8. 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.

9. 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.

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

  
17/02/2026

(Binod Kumar Singh)  
Member, RERA, Punjab