

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

Complaint No.0184 of 2023

Date of Institution: 25.05.2023

Dated of Decision: 17.03.2026

1. Dr Kanu Goyal and

2. Sh Sohan Lal Goyal

Both at House No 16/326 Aara Road near Civil Hospital, Moga, Punjab-  
142001

....Complainants

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt Ltd,

2. KAMAL KISHORE DIRECTOR,

3. RAJESH GOEL DIRECTOR

4. SHALINI BARATHI ADDITIONAL DIRECTOR

5. BHUPENDRA SINGH DIRECTOR

6. KRISHNA KUMAR AGARWAL DIRECTOR

All at India Trade Tower, Ist Floor, Madhya Marg Ext. Road, New  
Chandigarh, S.A.S Nagar, Mohali- 140901

....Respondents

Present: 1. Shri Parteek Garg, Advocate, for the complainants

2. Shri Tejeshwar Singh, Advocate for the respondents

**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 25.05.2023 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 The respondent be directed to hand over the legal possession of the Flat No. TLC ISABELLA A THIRD 301 after obtaining the Occupancy Certificate or Completion Certificate from the appropriate authority and to pay interest for

the period of delay in handing over possession of the said flat, specifically from the date 20.08.2014 when the Allottees Complainants started making payment but the Promoter Respondent failed to fulfill the commitment

1.2 To direct a thorough inspection of the project by appointing a Local Commissioner Expert for the same, to verify the status and quality of the construction development of project work.

1.3 To direct the Promoter Respondent to place on record the copies of all licenses, approvals, NOCs, clearances, applications with which their statuses, etc. pertaining to the said project in question.

1.4 To direct the Promoter/Respondent to provide a specific date by which he will get the completion certificate and hand over the Physical Possession of the said Flat in Question to Allottees Complainants.

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

2.1 The complainants had booked two flats with the respondent namely Omaxe New Chandigarh Developers Pvt. Ltd, vide **application No. TLC249** dated **20.08.2014 in the project "The Lake,"** has area of 1920 sq. ft. each developed at Mullanpur, New Chandigarh, Punjab and accordingly, they started making payments. The Complainants waited for a physical possession long time. Later on, the Respondent gave an offer that in replacement of aforesaid booking of 2 flats, the Complainants can be allotted a flat of double of the area i.e., super carpet area of 4850 Sq. Ft in the same project "The Lake". The Complainants had given the assent against the same TLC No. 249 dated 20.08.2014.

2.2 The Agreement for sale dated 14.09.2020 was executed between the parties on a total sale consideration of Rs.1,01,73,976/- for the Flat No. TLC ISABELLA - A THIRD 301 having super carpet area of 4850 sq. Ft at third floor, in tower block building no. ISABELLA-A (Annexures C-1 & C-2). The payments

made since the year 2014, have been duly adjusted against the present flat No. TLC ISABELLA A THIRD 301.

2.3 As per Clause 7.1 of the Agreement to Sell dated 14.09.2020, due date for Legal Possession of the said unit was 31.07.2021. But the Respondent failed to hand over the possession to Complainants by 31.07.2021.

2.3. The complainants have paid a sum of Rs.68,00,729/- from the year 2014 to 10.09.2020 to the respondent against total sale consideration of Rs.1,01,73,976/-, which constitutes approximately 67% of the total sale consideration. The remaining balance was agreed to be paid as per the terms of payment plan set out in Schedule C-2 attached with agreement to sale.

2.4. As per Clause 7.1 of the Agreement for Sale, the possession of the said flat was to be handed over to the complainants by the respondent on or before 31st July 2021. The Respondent has neither handed over possession of the flat nor paid any compensation by way of interest for the delay as mandated under the Act.

2.5 The Complainant made the oral protest & issued a legal notice dated 27.10.2021 (Annexure C-4). Respondent failed to fulfill their commitment to giving a time frame to deliver property and has to pay delayed interest as per contract and general principle of law. The Respondent did not bother to give a reply to the said Legal Notice. The Complainants as per Clause 7.6 and Clause 9.2 proviso of sub-clause ii of the Agreement dated 14.09.2020, is entitled for delayed interest & damages on account, the amount paid by Complainants has been used by Respondent.

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

4. The counsel for the respondent company has made his submission and asserted that the contentions of the complainant are contrary to and/or inconsistent with the true and complete facts.

4.1 The complainants and Saroj Rani & Seema Rani approached the respondent in August, 2014, seeking to book two units for investment purposes. On 10.11.2014, the complainants sent a letter to the Respondent no. 1, requesting for change of his payment plan to a 'combo payment plan' in respect of unit no.502(TLC/249) in caspean E, that provides extra discount to investors opting to book more than one unit (Annexure R-2). In August 2015, an Allotment Letter was executed between the complainants and Respondent no.1 for TLC/CASEPAN-E/FIFTH/502 and a discount of Rs.3,54,240/- was given to the complainants. The Basic Sale Price of above said unit (BSP) was Rs.52,15,944 (exclusive of club security deposit, IFMS, taxes, additional cost, maintenance charges, government levies etc.).

4.2 The complainants chose to finance their payment partially through a loan from PNB Housing Finance Limited ("PNB") for Rs.38,25,000/-. Permission to Mortgage was issued by the Bank on 18.03.2017, and further the Tripartite Agreement was executed between the complainants, the Respondent no. 1 and PNB on the same day.

4.3 The respondent stated that the complainants routinely defaulted in timely payments of the Unit under the Agreement entered into between the parties, despite multiple demand notices and call reminders being issued to them. Further, apart from the payments made by PNB directly, the complainants always made late payments.

4.4 Respondent stated that the complainants in August 2020 approached the Respondent no.1 stating that they had made a deal with allottees of one of the units of the project, namely Saroj Rani & Seema Rani, provisional allottees of TLC/CASPEAN-E/FIFTH/503, and the said allottees wished to withdraw from the project. Instead of refunding the amount upon cancellation, the same should be adjusted towards the complainants. The said parties i.e. Saroj Rani & Seema Rani and the Complainants presented a notarized affidavit dated 20.08.2020, stating that they wished to withdraw from the project but

instead of a refund, any amount made out in their favour should be credited to TLC/ISABELLA-A/THIRD/301, which was the new unit and the complainants wished to acquire this one. A true copy of the affidavit dated 20.08.2020 is annexed herewith as Annexure R-6. They further stated that the earlier unit(s) be cancelled and all amounts paid be readjusted towards TLC/ISABELLA-A/THIRD/301.

4.5 Thereafter, the Respondent no.1 entered into an Agreement for Sale for a third unit i.e. TLC/ISABELLA- A/THIRD/301. The Allotment letter earlier executed between the parties was cancelled and all the receipts already issued against payments before were re- issued as against this new unit. Further, as per affidavit provided by the erstwhile allottees of Caspean-E 503, their allotment too stood cancelled. Therefore, as of today, the complainants' interest remains only in TLC/ISABELLA-A/THIRD/301.

4.6 Respondent stated that the complainants once again obtained a loan, this time from HDFC Housing Finance Limited("HDFC") for Rs.85,00,000/-. A Tripartite Agreement was executed between the complainants, HDFC and Respondent no.1 on 03.12.2020. A true copy of the Tripartite Agreement dated 03.12.2020 is annexed herewith as Annexure R-8.

4.7 The respondent further submitted that due to the unprecedented and unforeseeable calamity of COVID-19, as with most businesses and all builders, the Respondent no.1 work too was halted for a period of time and even after that could only resume at a snail's pace, given the lack of availability of resources, personnel and labour at the time. Accordingly, the force majeure exception in Clause 7.1 kicks in and the possession date provided therein does not apply to the present case.

4.8 Respondent also submitted that the complainants have defaulted in making adequate timely payments. In this regard, Clause 5 of the Agreement clearly state that timely payment is of the essence, failing which the allottee

can be charged interest on the delay period. The complainants have grossly defaulted in making their due payments under the terms and conditions of the agreement between the parties.

4.9 As per respondent reply, complainants opted for "Additional Down payment Plan/Additional Discount payment Plan". As per this plan, an additional discount is offered to the allottee on the consideration for the unit in lieu of consensus to make timely payment of installments. In case of failure to make timely payment of installments, the Company has the right to withdraw such rebate/discount/concession etc. In the present case, a discount of Rs.3,54,240/- was given to the complainants due to the structure of the payment plan and because of the undertaking that the payments will be made strictly within time. The said benefit was given only in lieu of the fact that the original booking was a combo plan, and further the same benefit was transferred to the present unit in exchange for the commitment of timely payments, and as per the Note in Schedule C-2 of the Agreement, the respondent no.1 has the right to ask the allottees to pay the said benefit if payments are not made in time.

4.10 The present complaint deserves to be dismissed on the ground of non-joinder of necessary parties. The complainants have failed to implead "PNB Housing Finance Limited, SCO 16-17, SF, Canal Colony, Ludhiana" and "HDFC Limited, SCO 31, improvement Trust Area, Ferozepur Road, Moga - 142 001" Oriental Bank of Commerce, through its Branch Manager, Kalu Sarai, Sarva Priya Vihar, New Delhi- 110016" with whom the parties have entered into a Tripartite Agreement.

4.11 Respondent raised legal issued that the complainants have entered into the agreement with the respondent of their own free will and consent, after satisfying themselves of the contents of such agreements and the specifications of the unit/project and other terms and conditions. They are indisputably barred from doing so under the doctrine of estoppel. The doctrine

of estoppel precludes a person from denying or to negate anything to the contrary of that which has been constituted as truth, either by his own actions, by his deeds or by his representations or by the acts of judicial or legislative officers.

4.12 it is submitted that respondent nos. 3-7 have wrongly been impleaded. Respondent nos. 3, 4 and 7 stated to be Directors of the Respondent no. 1 company, are not directors, and are therefore strangers to the present dispute. No specific allegation has been made against them and no explanation has been given as to why they have been arrayed in the present complaint. Further, Respondent nos. 5 and 6 have been wrongly arrayed as parties in the present complaint as well. Firstly, the complainants have not entered into any private arrangement/agreement with any of these respondents for any of the grievances raised by the complainants in their complaint. Secondly, any grievances that the complainants may have are a subject of the agreement/contract entered into between the complainants and the Respondent no. 1 company, where the Directors of the company are not a party. The Respondent no. 1 company is a distinct juristic person capable of suing and being sued. As such, the other Respondents (nos. 3-7) are not proper or necessary parties to the present complaint.

5. The complainants filed their rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The counsel of the complainants has stated that no discount was offered by the respondents and also denied that the respondent has right to withdraw the same. It is stated that complainants have not availed any loan and there is no signature of any parties mentioned in the agreement (Annexure R-4) reflect that the Tripartite Agreement was not executed ever. Further, complainant also submitted that there is no delay in payment and till date (date of filing of rejoinder i.e. 17.07.2025) no possession has been handed over to complainants. The counsel of the complainants submitted that

Directors of the company are responsible for the acts of commission and omission of the company. It is further stated that as per website of the Registrar of Companies (ROC), respondents no. 3 to 7 are presently listed as Director of the Respondent no. 1. The complainants further stated that they are always ready to pay the balance sale consideration at any time subject to the respondents' fulfillment of their own statutory and contractual obligations.

6. The 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., complainants and respondents.

6.1 The Respondent has agreed that the complainants booked a flat TLC/ISABELLA-A/THIRD/301 for Rs.1,01,73,976/- and agreement for sale was executed on 14.09.2020 and clause 7.1 therein stipulated possession by 31<sup>st</sup> July 2021, subject to force majeure events. The learned Counsel for the respondent had submitted the written arguments dated 11.01.2024. In the reply filed on behalf of the respondent the following legal issues have been raised.

6.2 The respondent submitted that the allegations and claims made by the complainants are unjustified and the complainants have suppressed material facts. The possession timeline was impacted due to delays caused by the COVID-19 pandemic, which constituted an unforeseeable force majeure event. The respondent received various extensions from the authorities and were working tirelessly to be able to deliver the project as soon as possible.

6.3 Further, respondent submitted that the delay in allotment of unit has been caused due to the onset of the Covid- 19 pandemic due to which the opposite party's efforts to develop good quality housing projects have been derailed. For the same, the ambit of such force majeure events has been covered by Clause 7. I of the Agreement and Covid-19 is a Force Majeure Event and therefore all the delays are genuine and reasonable. Further, the

government recognized the COVID-19 pandemic as a Force Majeure event and, vide order dated 28.10.2020, extended the timelines for real estate projects by six months. Consequently, the validity of the registration of the said project under Section 8 of the Act was extended up to 31.12.2023.

7. Both the Counsel for the complainant as well as respondent addressed their respective arguments on 26.02.2026. The undersigned considered the rival contentions of both the parties and also perused the pleadings along with documents annexed by both the parties:

7.1 The complainants, Dr Kanu Goyal and Sohan Lal Goyal, booked a flat **TLC ISABELLAA THIRD 301** having a super carpet area of **4850 Sq. Ft.**, on the **THIRD** floor in tower block building no. **ISABELLA A** with the respondent for Rs.1,01,73,976/- at "The Lake." followed by the execution of the Agreement for Sale on 14.09.2020. As per the clause 7.1 of Agreement dated 14.09.2020, possession was to be handed over by 31.07.2021. The complainants have paid a sum of Rs.68,00,729/- from the year 2014 till 10.09.2020 to the respondent against total sale consideration of Rs.1,01,73,976/-, which constitutes approximately 67% of the total sale consideration. Earlier, the complainants had booked a flat with the respondent namely Omaxe New Chandigarh Developers Pvt. Ltd, vide **application No. TLC249** dated **20.08.2014 in the project "The Lake,"** has area of 1920 sq. ft. at Mullanpur, New Chandigarh, Punjab. Thereafter, an Agreement for sale dated 14.09.2020 was executed between the parties on a total sale consideration of Rs.1,01,73,976.00 for selling Flat No. TLC ISABELLA A THIRD 301 having super carpet area of 4850 sq. Ft, third floor in tower block building no. ISABELLA A. The payment made on account of flat no. 502(TLC/249) in caspean E and 503(TLC/249) in caspean E till 14.09.2020 was adjusted against the new flat i.e. TLC ISABELLA A THIRD 301. The unit no. 503(TLC/249) in caspean E was allotted to Saroj Rani and Seem Rani, who furnished a notarized affidavit dated 20.08.2020, stating that they wished to

withdraw from the project and any amount made out in their favour should be credited to TLC/ISABELLA-A/THIRD/301. In view of facts that the complainants have allotted new unit, allotment in respect of Caspean-E 502 and Caspean-E 503 has been cancelled by the respondent. Respondent also argued that the delay in possession justified under clause 7.1 as a Force-Majeure event arising from the Covid-19 Pandemic and since the Covid-19 pandemic falls within this clause, making the delay genuine and unavoidable. Respondent also submitted that the complainants have defaulted in making adequate timely payments but no details of the same was furnished during the proceedings. Further, there is no evidence on records that any discount was given by the respondent to the complainant. Further, as per para 1.5 of Form 'Q' Agreement to sale, any rebate granted for early payments cannot be withdrawn by promoter. Sections 88 and 89 of the Act of 2016 provide that its provisions would be in addition to those of any other law in force at the time and also, that the Act of 2016 would have overridden effect in case of inconsistency with any other law.

7.2 It is a matter of record that Hon'ble Real Estate Appellate Tribunal, Punjab vide its order dated 22.08.2022 in Appeal No.100 of 2021 titled as "Hero Realty vs Arun Premdhar Dubey" held that due to force majeure on account of Covid-19, "a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed". In view of above position the period of 4 months of force majeure has to be excluded from the period of delay in handing over possession to the complainant, order accordingly.

7.3 In view of above, if the promoter fails to complete or is unable to give the possession of unit in accordance with the terms of agreement for sale/allotment letter as the case may be, duly completed by the date specified therein. As such there is either of the two conditions that is to be taken note

of while dealing with question of their compliance and fulfilment. Firstly, where promotor fails to complete the project, secondly where promoter is unable to give possession of unit. Non-compliance of both above said conditions should be in accordance with the terms of the agreement for sale. In the present case, it is observed that the promoter not only failed to complete the project but also was unable to give the possession in accordance with the terms of the allotment letter. It is evident that the stipulated date for possession was 31.07.2021, yet the complainant has not been given possession to date. The delay stands admitted and cannot be justified.

7.4 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.

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

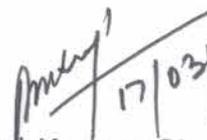
8.1 To issue Offer of Possession letter in writing to the complainant within the time stipulated as per term and condition mentioned in column 7.2 of the 'agreement for sale' dated 14.09.2020 after obtaining completion certificate from the competent authority.

8.2 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 plus two percent i.e. 8.80%) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs.68,00,729/- paid by complainant with effect from 31.07.2021 till date of order in the first instance (minus four months being force majeure event as discussed in para 7.2 above) within ninety days from the date of receipt of this order and submit a compliance report to this Authority about releasing the interest amount as directed.

8.3 Further, respondent is also directed to pay interest @ 10.80% on the amount of Rs.68,00,729/- paid by complainant from date of issue of order to actual date of possession or two months after getting the completion certificate by competent authority whichever is earlier.

9. It may be noteworthy that in case compliance report is not submitted by the respondents after the expiry of above stated period of sixty 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.

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

  
(Binod Kumar Singh)  
Member, RERA, Punjab