

**BEFORE SH. ARUNVIR VASHISTA, MEMBER-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/ GC No.0196 of 2023UR

Date of filing: 31.05.2023

Date of decision: **30.01.2026**

Lekh Raj Lehri son of Bahal Singh, resident of Lehri Street,
Jalalabad (West), District Fazilka, Punjab.

.... Complainant

Versus

1. Estate Officer, Patiala Urban Planning and Development Authority PDA, PUDA Complex, Urban Estate Phase II, Patiala, Punjab.
2. M/s Omaxe Limited, through its Director, Omaxe House 7, Behind Kalkaji Post Office Kalkaji, LSC, New Delhi 110019.

..... Respondents

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri J.P. Singla, Advocate, representative for the complainant
Shri Balwinder Singh, Advocate, representative for respondent no.1.
S/Shri Munish Gupta and Manjinder Kumar Bhargav, Advocates, representatives for respondent no.2.

ORDER

The present complaint has been filed by the complainant u/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'RERD Act, 2016') read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules') before the Real Estate Regulatory Authority, Punjab (hereinafter referred as



'Authority') relating to an *Un-Registered Project* 'PDA-Omaxe City' Sirhind Road, Baran, Patiala.

2. The gist of the complaint, as alleged by the complainant, is that the complainant purchased Flat No. G.F-1, Cluster- C, Block Sunflower, originally allotted to one Mr. Rajnish Kumar, after being lured by the respondents' advertisement in *Punjabi Tribune* dated 27.04.2010. Despite depositing ₹5,48,049/- against the tentative price of ₹3,24,028/-, possession, which was to be delivered by 29.12.2013 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 on 20.06.2011 after only 29% work was completed. The complainant got the said unit transferred in his name on 21.03.2011 on the same terms and conditions. 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 complaint was contested by both the respondents filing their separate written replies in the matter. Respondent no. 1 PDA in its reply alleged that under a Joint Development Agreement dated 16.11.2006, Respondent No. 2, M/s Omaxe Ltd., was solely responsible for completing all development works, providing infrastructure, and delivering possession within stipulated timelines, which it failed to adhere to despite repeated assurances, resulting in delays. The



provisions of RERA came into force prospectively w.e.f. 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 was 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. Respondent denied receipt of the alleged legal notice and contended that allegations of deficiency in service or unfair trade practice are baseless. It was asserted that the complaint was 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 being devoid of merit was liable to be dismissed.



4. Respondent No. 2 (the developer) in its reply alleged 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 was contended that the delay was beyond its control and not due to any willful default, and therefore it could not 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 was willing to comply with lawful directions, provided its rights and obligations were protected in light of the pending litigation and the original contractual framework.

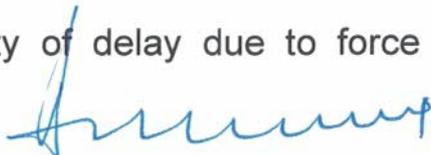
5. Complainant also filed rejoinders reiterating the averments of the complaint and controverting the allegations of the written replies filed by both the respondents.



6. The parties have been given a patient hearing and their submissions in support of their respective cases have been duly considered.

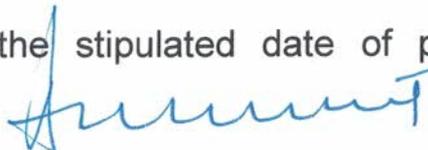
7. While putting forth the case of complainant it was argued on his behalf that complainant had deposited his life savings in the project on the promise of timely possession, but despite repeated assurances, neither possession nor refund has been made. It was contended that the respondents failed to perform their contractual and statutory obligations. It was then 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. 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.

8. While opposing the above contentions it was submitted on behalf of respondent no.1 PDA 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 then argued that the provisions of the RERA Act, 2016 came into effect prospectively from the year 2016 and 2017 and could not 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. Respondent no.2 Omaxe Ltd., on 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.

9. Above submissions and contentions put forth by the parties have been considered and examined in the light of facts and circumstances emerging on the record. The undisputed facts of the complaint are that the complainant was allotted Flat No. G.F-1, Cluster- C, Block Sunflower, in the project PDA-Omaxe City, Sirhind Road, Baran, Patiala. The unit was initially allotted to one Mr. Rajnish Kumar and was subsequently transferred in the complainant's name on 21.03.2011 on the same terms and conditions. The complainant deposited a sum of ₹5,48,049/- against the tentative price of ₹3,24,028/-. As per the allotment letter, possession was to be handed over by 29.12.2013. 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 eight years beyond the stipulated date of possession, the



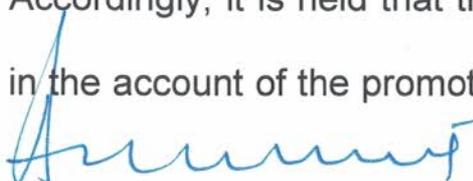
complainant has neither been delivered possession of the unit nor refunded his money. The project has remained unregistered with RERA, Punjab. It was evident that the stipulated date for possession was 29.12.2013, yet the complainant has not been given possession till date. The delay stands admitted 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.

10. The provisions of Section 18 of the Act grant an indefeasible right in favour of an allottee which cannot be taken away under any circumstance. The project was still incomplete as the development work there was yet to take off. Respondents cannot take benefit of the fact raising an argument in this regard that the project was since not registered it did not come within the purview of RERA. No doubt that registration of an ongoing project that has not been completed has been made mandatory as is there in the case of respondents but the fact that it is



unregistered does not put it out of the purview of RERA as it can be deduced that the powers vested in RERA are unfettered pertaining to all real estate transactions. They also cannot take recourse to this argument that the respondents applied for registration under RERA Act but their case was rejected by the Authority itself. Although it is a matter of discussion here as to how and under what circumstances their application for registration was rejected? yet as it came to be revealed during arguments that registration application perhaps was rejected by the Authority since no timeline for the completion of project was given by the respondents/ promoters. Had this been the case, the promoters should have made up the deficiency pointed out that was made a ground for rejection or otherwise they should have even challenged the rejection order before the Appellate Tribunal.

11. Complainant purchased the unit on 21.03.2011 and as per record at an amount of Rs.5,48,049/-. The said transfer was duly recorded by the promoter in its record on 21.03.2011. In such a scenario when it comes for refund and interest to the subsequent allottee, it will be the principal amount paid by first (original) allottee 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. Accordingly, 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 21.03.2011. No interest will be paid for the prior amount. However, for all other purposes, it is considered that the subsequent allottee had stepped into the shoes of the earlier allottee and is entitled for all the rights and facilities from the date of his or her 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.

12. Hon'ble Supreme Court in the case of **Laureate Buildwell Pvt. Ltd. Vs. 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 hereunder: -

"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....."

13. As discussed above and in view of the judgment of the Hon'ble Supreme Court, it is held that complainant is entitled to refund subsequent to the date of 21.03.2011 which is the date from which it got the status of allottee in the records of the promoter. Therefore, the interest to the complainant will be calculated from the date of transfer of unit in his name.

14. 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. Section 18 speaks 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:

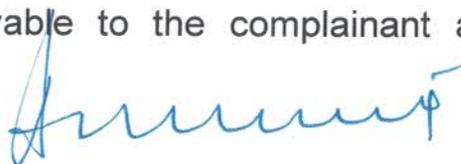
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the



promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

15. As a result of the above discussion, the complaint is accepted and the complainant is entitled to refund of the deposited amount of ₹5,48,049/- along with interest thereon at the prescribed rate (today's highest MCLR rate plus 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. It is however, made clear that any amount paid by the promoter first will be considered as payment against the interest whatever is due. After payment of whole of interest only then the payment will be considered against principal and accordingly the principal will be reduced and interest will be charged on the balance/reduced principal amount till the whole principal amount is fully paid. Even any payment after reduction in principal amount will be first considered towards interest payment which has become due on the reduced principal, if any.

16. 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.

17. 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.

18. The Secretary of this Authority is hereby directed to issue a "Debt Recovery Certificate" immediately and send the same to the Competent/ jurisdictional Authority as mentioned in the Punjab Land Revenue Act, 1887 after 90 days of the issuance of this order to be recovered as arrears of "Land Revenue". The complainant and the respondents are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same into account before sending "Debt Recovery Certificate" to the Competent Authority for recovery.


(Arunvir Vashista),
Member, RERA, Punjab