

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

Complaint No. RERA/ GC No.0382 of 2023

Date of filing: 20.10.2023

Date of decision: **24.04.2026**

1. Chander Mukhi Komal;
 2. Kanhaiya Lal Kalra
Both residents of 405, First Floor, Sector 16, Panchkula,
Haryana
- ...Complainants

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd., India
Trade Tower, 1st Floor Mullanpur, New Chandigarh, SAS Nagar,
Mohali
2. PNB Housing Finance Ltd., Antriksh Bhawan, 9th Floor, 22
Kasturba Gandhi Marg, New Delhi, Delhi.

... Respondents

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

Present: Advocate Mohd. Sartaj Khan, representative for the
complainants
Advocate Tejeshwar Singh, representative for respondent
No.1
Advocate Anjali Sheoran, representative for respondent
no.2

ORDER

The main allegations in this complaint filed under Section
31 of the Real Estate (Regulation and Development) Act, 2016
(hereinafter referred to as "the Act") by complainants against
respondents, relate to delay in handing over the possession of
residential unit allotted to the complainant in the project "The Lake" of
respondents, situated at Omaxe New Chandigarh vide allotment letter
dated 30.10.2015. The total sale price of the unit was Rs.88,83,595/-.

As per clause 40 (a) of the Allotment-cum – Buyers Agreement, the possession of the said unit was to be delivered by the respondent within 36 months i.e. on or before 30.10.2018 from the date of signing of the agreement. However, till date respondent company did not offer any possession and the project was nowhere near completion. Thus, there was a delay in delivery of possession of the period of more than 5 years. Accordingly, the main relief sought for is direction to respondent/ promoter to hand over the possession after obtaining OC/CC along-with payment of interest for the period of delay.

2. Notice of the complaint was served on the respondents who filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainants reiterating the assertions and the claims made in the complaint.

3. In the reply filed on behalf of respondent no.1 certain legal issues were raised on the grounds of maintainability of the complaint, limitation, cause of action and concealment of facts. The factum of booking of the unit in question by the complainant in the project of the case in hand has been admitted and it was submitted that there was no mandatory stipulated date of possession under the agreement, especially on account of non- timely payment of dues by the allottee and force majeure circumstances. The possession was to be delivered within a total period of 42 months, as per clause 40 of the allotment letter, subject to timely payments by the complainants. However, the complainants committed default in making payments of instalments. It was further submitted on behalf of the promoter that Section 19 (3) of the Act provides that the allottee shall be entitled to claim the possession of the plot or building as per the declaration given by the

promoter under Section 4(2)(1)(C). Thus, it could not be said that there was delay in handing over of possession. Moreover, due to outbreak of COVID-19 pandemic the Government had extended the period for all real estate projects by 6 months. Thus, it could not be said that there was any delay in delivery of possession. Hence also denying rest of the averments of the complaint, a prayer was made for dismissal of the complaint.

4. Respondent no.2 in its reply averred that since no relief had been claimed by the claimants against the answering respondent as such their complaint was not maintainable against it. As per the documents executed by the complainants, an amount of Rs.62,87,911/- was disbursed to respondent no.1 on behalf of complainants.

5. While putting forth the case of complainants it was contended by the learned counsel that in their present complaint, they seek interest for the delayed period of possession apart from a direction to the respondent/ builder to handover the possession upon obtaining OC as well as to refund the excess amount they had already charged from them as super area charges. It was thus argued that builder/ promoter could not have charged for the super area as in accordance with the provisions of the Act only carpet area could have been sold or charged which was only 1850 Sq. Ft./ 171.87 Sq. Mtrs. As per the buyer's agreement dated 30.10.2015 the possession of the completed apartment/ unit was to be delivered on 30.10.2018, but no OC has been obtained till date by the promoter. Hence, the complainants were entitled to claim interest for the period possession has been delayed already as well as till possession was delivered on obtaining completion certificate in a duly completed manner. Almost all

the payments have been made towards the total sale consideration. It was even contended that concerning the subvention scheme that was being highlighted by the respondent side claiming that certain amount was paid to the bank towards interest as pre-EMIs was to be deducted in case this Bench of the Authority concluded that complainants were entitled to interest on the delayed period of possession, had no effect as qua the subvention scheme there was a separate tripartite agreement involving the bank. As such no deduction could have been ordered to be made from the payable interest amount as per Section 18 of the Act.

6. While opposing above submissions and contentions, it was contended on behalf of the respondent that as per clause 40(a) of the buyer's agreement the date of delivery of possession comes out to be 30.04.2029 as the development/ construction of the unit was to be completed within 36 months from the date of signing of that allotment letter or approval of building plan, whichever was later and subject to *force majeure* conditions as well as timely payments to be made by unit allottee including subject to any other reason beyond the control of company. Otherwise also the clauses of agreement and the terms and conditions contained therein bound the parties. Agreement as well as its clauses were to be read carefully as per which rule of estoppel and waiver applies that barred complainants to raise claims against those. With regard to the payment made by the builder/ respondent towards interest to the bank under the subvention scheme it was contended that it was to be deducted if it was for argument's sake concluded by this bench of the Authority that complainants were entitled to the interest on delayed possession. Complainants in that

Summary

case cannot be allowed to take double benefit of the things specially when payment was being made by the builder under the subvention scheme towards interest as pre-EMI payments. It was thus finally submitted that claims made by the complainants were not only unjustified but were meritless as well. Their complaint deserved to be dismissed with costs.

7. Upon considering the above submissions and contentions of the parties this bench finds itself in partial agreement with the case put forth on behalf of the complainants. So far as the contention put forth and relief sought for regarding the payment of interest on the delayed period of possession is concerned, the entitlement of the complainants for the interest is found to be perfectly valid and justified by virtue of the provisions of Section 18 of the Act.

8. The admitted facts of the case are that the complainants booked one residential flat No.TLC/ Emerald-B/ Second/ 204 in the project 'The Lake' in the Omaxe New Chandigarh at a total sale consideration of Rs.88,83,595/-, out of which complainants made payment of Rs.75,21,471/-, which includes the home loan obtained from Punjab National Housing Finance Ltd. to the tune of Rs.62,87,911/-. This contention on behalf of the respondent that the date of delivery of possession was to be calculated from the date of signing of the allotment letter or approval of the building plans whichever was later ^{which} comes out to be 30.04.2029 is absolutely without any substance or merit. Firstly, it has not been shown when the building plans were approved. Secondly, there are disbursement request forms placed on record that belonged to year 2017 and onwards in which both the parties made declarations that all the requisite compliances

and approvals were obtained. As such it seems to be highly unjustified as to how and on what grounds the date of delivery of possession of the unit took has been calculated or determined other than 30.10.2018, which is the date on which 36 months expired from the date of signing the allotment letter/ agreement. It thus remains undisputed that as per clause 40 (a) of the allotment letter, possession of the flat was to be delivered within 36 months i.e. on or before 30.10.2018, but the possession was not delivered by the respondent/promoter by the stipulated date and the project had been delayed for a period of five years up to the date of filing of the complaint.

9. As already noticed, complainant fulfilled his obligations of making the requisite payment of the flat in question to the tune of Rs.75,21,471/- i.e. more than 90 % of the sale consideration and the balance amount was payable at the time of delivery of possession. As no offer for possession had been made on behalf of the respondent/promoter by the stipulated date, there was no question of complainants to make the balance payment out of the sale consideration. Therefore, no fault is attributable on the part of the complainants in their obligation under the allotment letter executed between the parties in relation to the sale of the flat in question. The respondent/builder was duty bound to fulfil its obligation of completing the project and handover the possession of the flat in question to the complainants on or before 30.10.2018 as stipulated in the allotment letter executed between the parties. The respondent/builder is neither entitled to exclude the Sundays and gazetted holidays etc. from the total period of 36 months for completion of the project nor for that matter he is entitled to seek any extension in the date of completion of

Amr

the project in view of the circular of the Authority and the Government of India in relation to Lock-down of COVID-19. The date for completion of the project of the case in hand thus remained 30.10.2018 by which date the respondent/promoter failed to complete the project without any justification and therefore the respondent/promoter is certainly at a fault in non-completion of the project of the case in hand by the stipulated date.

10. The relevant extract of Section 18(1) of the RERA Act which deals with the matter for seeking refund, interest and compensation in case of non- completion of the project due to default of the promoter runs 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:

xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

Answer

The right to claim interest on the delayed possession is an indefeasible and unqualified right given to an allottee by the statute which cannot be taken away or declined. Accordingly, the claimants are held entitled to interest for the period of delay.

11. However, at the same time so far as the deduction of the amount paid up to the bank towards interest as pre-EMI under the subvention scheme is concerned, the contention of respondent side is found to be justified as complainant side cannot be allowed to fetch double benefit on the question of interest specially when the interest was being paid on the loan amount by the builder although under tripartite agreement. It is the demand of propriety and fairness that no double benefit of interest can be claimed specially when no interest was being paid to the bank by the borrower/ allottee on the loan amount. No doubt that the RERA Act is a beneficial Act but its beneficial provisions cannot be put into effect to cause unfair and unjustified enrichment of an allottee. Rather RERA Act is a remedial Act in nature which seeks to remedy the wrongs done in past as it has been declared a 'retroactive Act' by the Hon'ble Apex Court in its landmark decision in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others.**

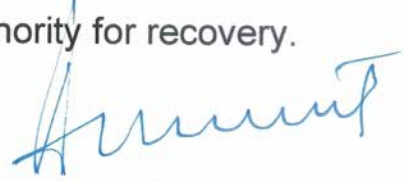
12. With regard to the contention raised on behalf of the complainants seeking refund of the excessive amount paid already on account of super area, this bench of Authority again fails to find any merit or substance therein. In the present case the buyer's agreement executed between the parties pertains to pre- RERA period. In the said agreement itself the total area to be sold has been clearly and categorically mentioned with its rate and price in per square feet and

per square meters. The total sale consideration of the unit has also been duly mentioned in the agreement that has been executed and signed by both the parties. As such whatever has been agreed upon and all the terms and conditions thereof have to be abided by the parties to the agreement. Here the well-known principle of mercantile jurisprudence *Pacta Sunt Servanda* also applies which means '**pact must be kept**'. As such this principle debars complainants to stake their claim for the refund of whatever amount that has been paid or agreed to be paid as per buyer's agreement between them. Moreover, the project has been duly registered with the Authority upon RERA Act coming into force and it has not been shown if the promoter had not disclosed all the project details i.e. the size of apartment based on carpet area even if such apartment had been sold earlier on any other basis like super area, super built up area or built up area etc. as well which shall not affect the validity of agreement entered into between promoter and the allottee to that extent as per rule 4(3) of Punjab State Real Estate (Regulation and Development) Rules, 2017 at that time. Besides it has even not been mentioned in the agreement if the total area being agreed to be sold was super area or carpet area as only the word '**total area**' has been mentioned. In this manner it also cannot be said that the total area that has been sold was either carpet area or super area. Hence the agreement between the parties has to prevail. Rather another rule of mercantile jurisprudence '*Caveat emptor*' relating to sale of goods also applies in the matter which means '**buyer beware**'. So, complainants should have been vigilant enough about the terms and conditions duly mentioned in the agreement.

13. Having discussed all those things above and as an outcome thereof, the present complaint is partly accepted and the respondent/ promoter is directed to hand over valid physical possession of the unit in question to the complainants after obtaining the requisite completion/ occupancy certificate from the Competent Authority. Further, the respondent shall pay to the complainants interest at the prescribed rate i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017, on the amounts exclusively paid by the complainants but not paid by the Bank directly to the respondent/ promoter under the subvention tripartite Agreement for the delay in handing over possession w.e.f. 30.10.2018 till the delivery of valid and legal possession of the unit upon obtaining OC/CC in accordance with the terms and conditions of the agreement for sale. The respondent shall also adjust the interest for the delayed period on the amount so paid by the complainants directly to it against the balance sale consideration at the time of handing over possession. The conveyance deed shall be executed thereafter in accordance with law within a time-frame prescribed.

14. The respondent is directed to make the above payment calculated in said manner within 90 days from the date of receipt of this order as per Section 18 of Act, 2016 read with Rules 17 of the Rules, 2017. The said amount is to be collected as arrears of Land Revenue by the Competent Authorities as provided/authorized in the Punjab Land Revenue Act, 1887 read with section 40(1) of the Act, 2016. In case payment is not made within abovesaid period of 90 days, then Secretary of this Authority shall be issuing "Recovery Certificate" as

per rules. The complainants and the respondent 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 "Recovery Certificate" to the Competent Authority for recovery.



**(Arunvir Vashista),
Member, RERA, Punjab**