

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

Complaint No. RERA/ GC No.0430 of 2023

Date of filing: 23.11.2023

Date of decision: **15.05.2026**

Aditi, resident of House No.2514, Sector 12, Phase-2, Sonipat
Urban Estate Karnal

... Complainant

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. India
Trade Tower, 1st Floor, Madya Marg Extension, SAS Nagar
(Mohali), Punjab

... Respondent

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

Present: Advocate Manpreet Singh Longia, representative for the
complainant
Advocate Arjun Sharma, representative for respondent

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 complainant relate to delay in handing over the possession of residential apartment booked by the complainant in the project "The Resort, Part-B" of respondent. The total sale price of the apartment was Rs.36,63,972/-. At the time of booking, it was promised by the respondent that the possession of the apartment would be handed over within a period of 3 years i.e. on or before 21.11.2019. Till date the complainant had paid a total amount of Rs.25,83,643/- out of the total sale consideration. But neither the possession had been handed over nor any agreement to sell was executed by the respondent. Accordingly, the main relief sought for is

to issue direction to respondent to pay interest for the delayed possession as per RERA Rules on the total amount paid by the complainant till the date of offer of actual legal possession after obtaining OC/CC from the competent authority.

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

3. In the reply filed on behalf of the respondent it was submitted that present complaint of the complainant was liable to be dismissed outrightly as she had not approached this authority with clean hands. She was not only guilty of concealing the material fact but tried to mislead the authority by making incorrect and false averments in support of her case. It was then submitted that actually complainant applied for allotment in the project in question on 22.11.2016 paying an amount of Rs.one lac. Thereafter vide a letter dated 01.12.2017 respondent invited her for allotment of residential unit in the project in question and she was offered unit no. T20-904 measuring 1270 sq. ft. Complainant was also further requested to deposit an amount of Rs.3,90,006.76 to confirm her allotment on or before 15.12.2017. There was no response from her side. She was therefore again requested vide a letter dated 16.12.2017 to pay the same. Then on 31.05.2018 she without any demand raised on the part of respondent paid an amount of Rs.3,05,740/- to the respondent company on her own. She again deposited Rs.1,55,000/- on her own accord without there being any demand from respondent side. All those said amounts were thus deposited by her with her own volition. Then in the month of November- December, 2018 she approached the respondent and on her request itself respondent showed her some flats in the project in

question. Out of the shown flats complainant expressed her inclination for allotment of unit No. RNC/TOWER-20/EIGHTH/802 i.e. the unit in question. Accordingly, the respondent vide its letter dated 14.12.2018 requested her to execute and register an agreement for sale qua the said unit. However, she did not come forward to execute the same. Again, vide another letter dated 23.02.2019 respondent requested the complainant to do the same but the complainant had not come forward till date to do the needful as was asked. Thus, letters were addressed to her asking her to come forward to do the needful but she failed to do so. She cannot be allowed to take benefit of her own wrongs and no undue benefit could be given to complainant under the provisions of the Act as there was no agreement or allotment even in her favour and whatever amount has been deposited by her it was a unilateral action on her part without there being any allotment agreement. A prayer was accordingly made for dismissal of the complaint.

4. While putting forth case of complainant her learned counsel argued that in the present case a total amount of Rs.25,83,643/- stood paid to respondent out of the total sale consideration of Rs.36,63,972/-. All that payment which is a major amount of the total sale consideration was received by the respondent in violation of the provisions of RERD Act without getting an agreement to sell executed till date. Under these circumstances, specially when no agreement to sell has been executed a presumption is to be drawn with regard to allotment date which in the case in hand should reasonably turn out to be 14.12.2018 when a letter was addressed to the complainant by the builder admitting therein the factum of allotment although also asking complainant for getting an agreement for sale

executed. It means the allotment was already there and the builder had been accepting the payments towards the sale consideration. When presumption of allotment is drawn to be done on 14.12.2018 then date of delivery of possession could be further presumed to be 14.06.2022 after adding six months grace period on account of force majeure i.e. Covid outbreak. As such since the possession has been delayed complainant was entitled to the interest to be paid on the amount paid by her till valid possession was delivered apart from the direction to be issued to respondent to handover the possession of the apartment in question to complainant at the earliest after obtaining OC and CC from the competent authority.

5. While countering the above submissions, it was contended by the learned counsel for the respondent that the present complaint of the complainant was liable to be dismissed outrightly as she had not approached this authority with clean hands. She was not only guilty of concealing the material fact but she tried to mislead the authority by making incorrect and false averments in support of her case as well. In this manner she did not deserve any relief more specifically the discretionary one in view of concealment of material facts by her. It was then submitted that actually complainant applied for allotment in the project in question on 22.11.2016 paying an amount of Rs.one lac. Thereafter vide a letter dated 01.12.2017 respondent invited her for allotment of residential unit in the project in question and she was offered unit no. T20-904 measuring 1270 sq. ft. Complainant was also further requested to deposit an amount of Rs.3,90,006.76 to confirm her allotment on or before 15.12.2017. There was no response from her side. She was therefore again requested vide a letter dated

16.12.2017 to pay the same. Then on 31.05.2018 she without any demand raised on the part of respondent paid an amount of Rs.3,05,740/- to the respondent company on her own. She again deposited Rs.1,55,000/- on her own accord without there being any demand from respondent side. All those said amounts were thus deposited by her with her own volition. Then in the month of November-December, 2018 she approached the respondent and on her request itself respondent showed her some flats in the project in question. Out of the shown flats complainant expressed her inclination for allotment of unit No. RNC/TOWER-20/EIGHTH/802 i.e. the unit in question. Accordingly, the respondent vide its letter dated 14.12.2018 requested her to execute and register an agreement for sale qua the said unit. However, she did not come forward to execute the same. Again, vide another letter dated 23.02.2019 respondent requested the complainant to do the same but the complainant had not come forward till date to do the needful as was asked. Thus, letters were addressed to her asking her to come forward to do the needful but she failed to do so. She cannot be allowed to take benefit of her own wrongs and no undue benefit could be given to complainant under the provisions of the Act as there was no agreement or allotment even in her favour and whatever amount has been deposited by her it was a unilateral action on her part without there being any allotment agreement. So much so, even her conduct as has been clear from the record showed that she had been depositing amounts on her own having some oblique purpose in her mind. Her complaint was therefore liable to be dismissed outrightly.

6. Above submissions and contentions of the parties have been considered and examined in the light of material placed on record. Upon doing so, this bench fails to agree with what has been argued on behalf of the respondent. This contention on behalf of the respondent that certain amounts were being deposited by the complainant on her own without there being any allotment or agreement or even the demand on the part of respondent is totally without any substance or justification specially in view of the letters being addressed to the complainant throughout since the year 2018 when the alleged payment of Rs.3 lacs was made by her in addition to Rs. one lac paid at the time of booking as long back as in the year 2016. Till date more than Rs. 25 lacs have been deposited. It could not be justifiably believed or concluded that all that money that constituted a major amount of the total sale consideration was being paid by complainant of her own and that the same was being received by the respondent company without there being any allotment or agreement with regard to sale of the unit. If the money was being deposited by the complainant of her own without there being any demand on the part of respondent why it did not refund it to her cancelling the allotment which stood admittedly received and demanded by the respondent in so many words. The action of the respondent amounted to its staying in the implied agreement of allotment between them. It is apparent from the record that all those letters that were being addressed to the complainant asking her to come forward to execute the agreement to sell are nothing but the devised tactics to avoid the penal action that may be taken by the authority against it for receiving more than 10% of amount before entering into an agreement in writing with the allottee.

Mere addressing such letters to complainant did not justify inaction on its part rather, in the event of a major amount being deposited by the allottee. The inaction on the part of respondent rather showed that an implied agreement for sale of the unit was there between them. So many letters being admittedly addressed to the complainant since 2017 more specifically the one addressed on 14.12.2018 to her clearly showed that there was an allotment of the unit and the respondent was still in the implied agreement for sale.

7. While agreeing with the complainant side and the case put forth on her behalf it seems to be quite justified if a presumption is raised with regard to date of allotment as 14.12.2018 on account of letter of the even date addressed to her by the respondent admitting the factum of allotment in so many words therein. There is also an observation made by the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. (now known as M/s Hicon Infrastructure) Vs. Trevor D'Lima and Ors. (Civil Appeal No(s) 3533-3534 of 2017)** "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them along with compensation. When there was no delivery period stipulated in the agreement, a reasonable time period of 3 years has to be taken into consideration."

8. In the light of what has been observed by the Hon'ble Supreme Court (Supra) a period of three years being reasonable period, the date of delivery of possession of the apartment is held to be 14.06.2022 after adding six months grace period on account of force majeure i.e. Covid outbreak. Thus, the respondent is held liable

to pay interest to the complainant for the period of delay in handing over possession of the apartment w.e.f. 14.06.2022.

9. As an outcome of above discussion, the complaint is accepted and the respondent/ promoter is directed to pay interest to the complainant against the paid-up amount 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 for every month of delay from the due date of possession i.e. 14.06.2022 till actual handing over of possession of the unit upon obtaining OC/CC as per Section 18 (1) of the Act of 2016 read with rule 17 of the rules. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent is further, directed to handover the physical possession of the unit in question within two months upon obtaining OC/CC from the competent authority. The conveyance deed shall be executed thereafter in accordance with law within a time-frame prescribed.

10. In case no payment is made by the respondent/ promoter 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**