

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

Complaint No.0175 of 2024

Date of Institution: 15.05.2024

Dated of Decision: 27.04.2026

Harnawab Sandhu, 29/H, Shivalik Vihar, Nayagoan, Sahibzada Ajit
Singh Nagar (Mohali), Punjab-133301

....Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt Ltd, INDIA TRADE TOWER, 1ST FLOOR, MULLANPUR, New Chandigarh, New Chandigarh, S.A.S Nagar, Mohali- 140901
2. PNB Housing Finance LTD, Regd Office. 9TH Floor, Antriksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi -110001

....Respondents

- Present:
1. M. Shahnawaz Khan, Advocate, for the complainant,
 2. Shri Ashim Aggarwal, Advocate and Shri Gautam Goyal, Advocate, for the respondent no. 1
 3. Ms Shabnam Mahajan, Advocate, for the respondent no. 2

Order u/s. 31 read with Section 40(1) of Real Estate (Regulation & Development) Act, 2016 read with Rules 16, 24 and 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.

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 15.05.2024 by the complainant in his individual capacity against the respondent seeking following reliefs:

1.1 Respondent No.1 be directed to charge only for "Actual Carpet area" i.e. measuring 219.25 Sq. Meters/1844.9 Sq. Ft as per disclosure made before RERA Authority by the promoter while registration of project, and not for the super area i.e. 256.41 Sq. Meters/ 2570 Sq. ft & Fresh Buyers Agreement be executed as per RERA Rules and earlier one be treated one sided/Null and Void if required as per provisions of RERA Act,2016.

1.2 Respondent No.1 be directed to refund or adjust the excess amount of Rs.59,07,827/- for excess area of 130.99 Sq.mtr @ Rs.45101.36 per sq. mtr charged from the complainant in the name of Super Area, instead of Carpet area.

1.3 Respondent No.1 to be directed to pay interest for delayed possession on amount paid i.e. Rs.1,66,76,029/- incl. GST till the date of valid Offer of Possession after obtaining OC/CC;

1.4 Respondent No.1 be directed to adjust or refund illegally demanded interest of Rs.4,28,305/- on amount due as per Annexure C-5.

1.5 Respondent No.1 to 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.

1.6 That Respondent No.1 be directed to pay the PRE EMI as per clause 3 of the Tri Partite Agreement dated 20.08.2015 and as per letter dated 14.01.2016, till the date of valid offer of possession.

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

2.1. The complainant had booked a Residential Unit Penthouse 4BHK bearing No. TLC/CASPEAN-E/TWENTY-FOUR/2401, having Area of 3770 Sq

Ft. on 24th Floor in Tower CASPEAN-E in Project named "THE LAKE", situated at OMAXE New Chandigarh at sale price of Rs.1,93,57,956/- including all additional costs vide allotment cum Buyer's Agreement Dated 12.08.2015 under Subvention scheme, was executed with the complainant. Copy of the same is ANNEXURE C-1.

2.2 The complainant had opted for subvention scheme and accordingly Tri Partite-Agreement dated 20.08.2015 was executed between the complainant, Promoter (Respondent No.1) and the bank i.e. PNB Housing Finance Ltd (Respondent No.2). As per the opted plan, loan amount of Rs.1,39,87,362/- was sanctioned and an amount of Rs.1,30,86,497 has been disbursed by the bank till 30.10.2018. Further as per clause 3 of the above said Tri Partite-Agreement dated 20.08.2015, all Pre-emi's were to be paid by the Respondent No.1 till the date of valid offer of possession and after taking possession the EMI's were supposed to be paid by the complainant. The same can be found in the letter dated 14.01.2016 whereby the Respondent no.1 has agreed to bear the Pre-Emi's till the intimation of possession of the said flat. Copy of the Tri Partite-Agreement dated 20.08.2015 (ANNEXURE C-2), letter dated 14.01.2016 (ANNEXURE C-3) & Bank loan statement is ANNEXURE C-4.

2.3 The complainant has paid a total amount of Rs.1,66,76,029/- including GST as per statement of unit dated 06.06.2023 i.e. Rs.1,30,86,497/- has been disbursed by the bank and Rs.35,89,532/- has been paid by the complainant till date. The Respondent no.1 has illegally demanded interest of Rs.4,28,305/- on due amount in the above said statement whereas the complainant has opted for Subvention scheme and the amount was to be disbursed only by the bank. The Respondent no.1 has opted unfair trade practice and violated various provisions of RERA Act 2016 by demanding interest according to statement. Copy of the statement of unit issued is Annexure C-5.

2.4 As per the Clause 40 (a) of the allotment letter dated 12.08.2015, the possession of the unit was to be delivered by the respondent within 36 months from the date of execution of the present allotment letter i.e., till 11.08.2018. The respondent company did not offer any possession till date and the project is nowhere near completion. Neither any interest for delayed possession nor any compensation has been paid by the promoter to the complainant till date.

2.5 Furthermore, the Respondent Company was to provide the carpet area measuring of 219.25 Sq. Meters/ 2360 Sq. Ft as per disclosure made to RERA Authority while registration of project but the complainant has been illegally charged for super area of (350.24 Sq. mtr/3370 Sq. Ft. @ Rs.45101.36 per sq. mtr) instead of Carpet area. The respondent company has violated various Sections 11,12,14,18 & 19 of RERA Act 2016 by not making adherence to the sanctioned plan/ layout plan and has charged Rs.59,07,827/- in excess (for 1409.9 Sq. ft./130.99 sq. mtr.) illegally from the complainant and respondent has threatened to cancel the allotment in case of non-payment. Whereas the Respondent Company while registering the project with RERA Authority has themselves shown the carpet area as 219.25 sq. meters for Penta House in Tower Caspean-E. Copy of records uploaded at the website of RERA Authority by the respondent & Rera Registration is annexed as Annexure C-6(Colly).

2.6 Till date, the Respondent Company has neither adjusted the excess amount of Rs.59,07,827/- which has been illegally charged by the way of misrepresentation against the excess area. As per clause 1.2 of the model Buyer agreement "Promoter can only charge for the carpet area" and not for the super area.

2.7 The respondent company has got their project registered with the RERA Authority and completion date of project was July 2021 which has also been passed but the project has not been completed and is delayed.

3. Notice of the complaint was served on the respondents and the respondent no.1 has filed a detailed reply dated 25.09.2024 in the matter.

3.1. The respondent stated that the complainant 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 12.08.2015 under which the complainant was allotted flat no.2401, 24th floor, Tower Caspean-E in the residential project 'THE LAKE', situated in 'Omaxe New Chandigarh', SAS Nagar, Mohali. The price of Unit was amounting Rs.1,93,57,966/- and the same is reflected in Annexure-A of the allotment letter dated 12.08.2015(C-1). In this regard reference is made to clause 7 and 8 of the allotment letter wherein it is stated that the price of the said unit and other charges are calculated on the basis of super area vis-a-vis unit area and also to clause 16 wherein it is clearly stated that super area is only tentative and the final super area is determined after the completion of construction of the flat. The respondent also stated that the complainant defaulted in timely payments of the Unit.

3.3 The respondent stated that the tri-partite agreement between the complainant and PNB Housing Finance Ltd was executed. As per the subvention scheme the builder/respondent No. 1 undertook to pay only the pre-EMI interest to PNBHFL i.e. Respondent No.2.

3.4 Respondent no.1 denied that he is demanding illegal interest of Rs.4,28,305/-. The said amount is charged on delayed payments made by the complainant. In this regard it is stated that the amount of loan sanctioned by the PNBHFL i.e. Respondent No.2 was Rs.1,39,87,362/- only as is reflected in the Statement of account

annexed with the complaint as C-4 and the balance consideration had to be borne by the complainant himself. The complainant has time and again defaulted in making payments and on which delayed interest have accrued to the respondent No.1 which still remains to be paid. Reminders were sent to the complainant for making payment for the outstanding amounts. Copies of some of the aforesaid reminder letters are annexed hereto as Annexure R-3 (colly). The complainant had opted subvention plan in the present case, The complainant had delayed in making the payments and total interest penalty as on 24.07.2024 amounts to Rs.3,72,575/-.

3.5 The respondent no.1 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 36 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 42 months is subject to force majeure conditions. The respondent stated that the calculation of period of construction should exclude 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.

3.6 The counsel of the respondent also submitted that the complainant 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 complainant, the same must be adjusted against the delay interest to be charged to the complainant on account of his delay.

3.7 The respondent further stated that the carpet area of the unit in question is not finalized yet and will be confirmed only upon the completion of the project. In this regard it is pertinent to refer to clause 16 of the agreement wherein it is interalia stated that the super area is only tentative and the final size, location etc. will be confirmed on the completion of the project. With respect to the charging of the unit in question on the basis of super area, it is pertinent to mention column 7 of the agreement/letter wherein it is interalia stated that-

"the allottees (s) agrees that he shall pay the price of the said unit and other charges calculated on the basis of super area viz-a-viz Unit Area which is understood to include pro-rata share of common areas in the project..."

Further clause 8 states that—

" The allottee(s) hereby agrees and understands that the calculation of the super area of his booked unit and has no objection relating to the authenticity of the said calculation offered by the company.

From the above it becomes amply clear that the price of unit is based on Super area and the complainant understood the same at the time of signing the agreement/letter. It is submitted that the agreement/letter signed between the parties is dated 12.08.2015 i.e. prior to the coming into force of the RERA Act and accordingly the governing terms and conditions of the same are binding on the complainant as he signed the agreement/letter with open eyes and without any undue influence. The dispute regarding the price of the unit being based on super area is not only baseless but also time-barred as the agreement/letter was signed way back in August, 2015.

3.8 The respondent further stated that no amount has been charged in excess from the complainant. It is submitted that every demand raised or

amount charged by the respondent No.1 is strictly as per the agreement/letter signed between the parties and as per the payment plan opted by the complainant as per his own free will and after understanding all the terms and conditions.

4. Notice of the complaint was served on the respondents and the respondent no.2 has filed a detailed reply dated 14.02.2025 in the matter and stated that:

4.1 The complainant had entered into a tri-partite agreement dated 20.08.2015 with respondent no. 1 to 2 for purchase of one residential unit Penthouse 4BHK bearing no. TLC/CASPEAN-E/ TWENTY-FOUR/2401, having area of 3770 Sq. Ft. on 24th floor in Tower CASPEAN-E in Project named 'LAKE", situated at OMAXE, New Chandigarh. In the aforesaid agreement, the respondent no.2 was also a party and had agreed to pay the due consideration for residential unit to the developer/ respondent no. 1 to develop on behalf of complainant and consequently the complainant had agreed to pay monthly installments to the answering respondent, The loan was sanctioned to the complainant vide sanction letter dated 21.07.2015. An amount of Rs.1,40,51,195/- (including insurance premium of Rs.63,833/-) was sanctioned to the complainant on floating rate of interest.

4.2 In the present complaint that the complainant has not leveled even an iota of allegations on account of deficiency in service or default/ violation on part of answering respondent no.2 within the contours of The Real Estate (Regulation and Development) Act, 2016. It is further submitted that no default or contravention of any provisions of the Real Estate (Regulation and Development) Act, 2016 is alleged against the answering respondent no.2. Therefore, the present petition against the answering respondent does not fall within the contours of Real Estate Regulation and Development Act 2016 on account of non-disclosure of Cause of Action. The answering respondents have

been made a scapegoat in the dispute between the builder and buyer and has been arrayed unnecessarily.

4.3 Respondent no. 2 submitted that the complainant has not approached this Hon'ble Authority with clean hands. The answering respondent have sanctioned the loan to the complainant and paid the amount of the developer. The role of the answering respondent is complete at the moment entire payment is made to the developer. It is also submitted that answering respondents has no concern whatsoever with regard to the delivery of possession. Thus; the present complaint is not maintainable before this Hon'ble Commission as the complainant has not approached the Court with clean hands.

4.4 Respondent no.2 also submitted that Clause 10.8 of the General Terms and Conditions duly signed by the complainant encapsulates that in case any dispute arises between the borrower/complainant and the answering respondent then in that case, the parties shall submit to the jurisdiction of the arbitration and the decision of the arbitration shall be final in that case.

5. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The complainant has referred the Hon'ble Supreme Court decision in the case of Emaar MGF Land Vs Aftab Singh (Civil appeal no. 23512-23513 of 2017), held that the presence of an arbitration clause in the agreement to sell executed between the parties does not exclude the jurisdiction of RERA authority. The complainant has also referred the Hon'ble Supreme Court decision in the case of M/s Halliburton Offshore Service Inc. Vs Vedanta Limited & Anr, where it was held that:

"69. The past performance of the contractor cannot be condoned due to covid-19 lockdown in March, 2020 in India."

The complainant's counsel stated that as per para 9.2 of the Model Agreement, the allottee is entitled to stop making further payments to the respondent company as demanded by them and also referred the decision of

Hon'ble Supreme Court in the case of "Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna" civil appeal no. 5785 of 2019, wherein it was held that the incorporation of one-sided and unreasonable clauses in the Apartment Buyers Agreement constitute unfair trade practices. Thus, the Developer cannot compel the buyers to be bound by one-sided contractual terms contained in the Apartment Buyers Agreement. The counsel of the complainants also referred some other decision whose facts are not similar to the facts of the present case.

6. 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 05.03.2026. Further, counsel of the respondent no.1 has 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. 05.03.2026. Matter is reserved for detailed order.

7. The complainant was allotted Residential Unit Penthouse 4BHK bearing No. TLC/CASPEAN-E/TWENTY-FOUR/2401, having Area of 3770 Sq Ft. On 24th Floor in Tower CASPEAN-E in Project named "THE LAKE", situated at OMAXE New Chandigarh. As per Allotment cum Buyer's Agreement dated 12.08.2015, the total price of the unit is Rs.1,93,57,956/-. The date of possession is 11.02.2019. Till date no offer of legal possession is offered to the complainants by the promoter. Total payment Rs.1,66,76,029/- is made till date. As noted above valid possession was to be handed over to the complainant on or before 11.02.2019 and it is apparent on record that there is more than 6 years delay.

7.1 The plea of the respondent that the complainant has also make payment after due date and as per section 19(7) of the RERA Act, the complainant is liable to pay interest on his delayed payments at the rate

prescribed in Rule 16 of the Rules of 2017. The contention of the respondent is partly acceptable in respect of interest pertains to the period before due date of possession can be adjusted against interest payable to the complainant by the respondent. Further, complainant is not liable to pay delay interest on the payments pertains to dates which falls after due date of possession i.e.11.02.2019.

7.2 The complainant has raised the issue that the respondent no.1 has been illegitimately charged for Super Area instead of Carpet Area and also charged extra amount of Rs.59,07,827/- in excess for 130.99 Sq. mtr. In this regard, it is pertinent to mentioned that the agreement/allotment letter was signed between the parties on 12.08.2015, which is prior to the enactment of RERA Act. The said agreement was signed by the complainant with open eyes and without any undue influence. There is no express provision in RERA Act that the agreement executed before enactment of RERA Act will be revised as per the Form 'Q' after registration of ongoing project with RERA Authority. Therefore, the contention of complainant on issue that price of the unit in on basis of super area is not acceptable.

7.3 Further, 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.

7.4 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 11.02.2019 (42 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 11.02.2019 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.

7.5 It is matter of facts that Tri Partite-Agreement dated 20.08.2015 was executed between the complainant, Promoter (Respondent No.1) and the bank i.e. PNB Housing Finance Ltd (PNBHFL-Respondent No.2). As per the opted plan, loan amount of Rs.1,39,87,362/- was sanctioned, and an amount of Rs.1,30,86,497 has been disbursed by the bank till 30.10.2018. Further as per clause 3 of the above said Tri Partite-Agreement dated 20.08.2015, Respondent No.1 undertakes to pay only Pre-EMI interest to PNBHFL (Respondent no.2) for the loan amount disbursed/ to be disbursed by the PNBHFL to the borrower (complainant) in respect of above said property, but no period was mentioned for which Pre-Emi to be paid by the respondent no.1. Further, the Tri Partite-Agreement dated 20.08.2015 was executed between the complainant, Promoter (Respondent No.1) and the bank i.e. PNB Housing Finance Ltd (PNBHFL-Respondent No.2) and this is not part of agreement to sale/allotment letter. Further, there are no provisions in RERA Act to allow relief in case of violation of provisions of such Tri Partite-Agreement. Hence complainant prayer to direct the respondent no. 1 to pay the Pre-emi as per clause 3 of the Tri Partite Agreement dated 20.08.2015 and as per letter dated 14.01.2016, till the date of valid offer of possession is not accepted.

7.6 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) *...."*

7.7 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 40(a) of the 'allotment letter' dated 12.08.2015 after receiving the completion certificate from the competent authority.


8.2. As per account statement dated 03.01.2019, payment of Rs.1,60,39,614/- out of total payment of Rs.1,66,76,029/- was paid before 12.08.2019 i.e. due date of possession. Therefore, the interest to the complainant will be calculated from the due date of possession of unit on amounting Rs.1,60,39,614/- and interest on remaining amount i.e. Rs.6,36,415/- from date of deposit with the respondent till actual realization of the refund.

8.3 As a net result of the above discussion, this complaint is accordingly partly 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 i.e. Rs.1,60,39,614/- w.e.f. 11.02.2019 the date agreed for handing over possession to the date of this order, the arrear of interest be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017.

8.4 For the payment amounting Rs.6,36,515/- made after possession date i.e. 11.03.2019 interest under section 18(1) of the Act at the rate of 10.80% per annum w.e.f. date of respective payment to till the date of this order. The above interest be paid within the statutory time i.e. ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order.

8.5 Respondent is further 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 complainants i.e. Rs.1,66,76,029/- from the date of this order till the date of delivery of legal valid possession of the flat bearing No. TLC/CASPEAN-E/TWENTY-FOUR/2401, type-4 BHK on 24th floor in Tower- CASPEAN-E in Project named "THE LAKE", situated at Omaxe, New Chandigarh, Punjab or two months after getting the completion certificate by competent authority and offering possession whichever is earlier and submit the compliance report. As per record, respondent has neither furnished any Completion/Occupation Certificate from the competent authority nor offer any possession of unit to complainant.

9. 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.
10. 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.
11. File be consigned to the record room after due compliance.


19/4/26

(Binod Kumar Singh)
Member, RERA, Punjab