

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

Complaint No. RERA/ GC No.0185 of 2024

Date of filing: 21.05.2024

Date of decision: **27.02.2026**

Aanchal Virk, R/o 21, Regency Villas, Paithan Road, Gajanan
Nagar, Aurangabad, Maharashtra, Pin Code No.431002

... Complainant

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd., India Trade Tower, 1st Floor Mullanpur, New Chandigarh, SAS Nagar, Mohali
2. Bhupendra Singh through Director B-16 1st Floor, East of Kailash South Delhi, Delhi.

... Respondents

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

Present: Advocate M-Shahnawaz Khan, representative for the complainants
Advocate Sanjeev 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 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 06.07.2018. The total sale price of the unit was Rs.82,89,286/-. As per clause 7.1 of the Allotment Letter-cum – Buyers Agreement, the possession of the said unit was to be delivered on or before 31.07.2021. However, till date possession has not been delivered to

the complainant. Accordingly, the main relief sought for is to issue direction to respondent to hand over the possession of the apartment along-with payment of interest for the period of delay till possession of the same is delivered.

2. Notice of the complaint was served on the respondent who filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainant reiterating the contents of the complaint.

3. In the reply filed on behalf of the respondent certain legal issues were raised on the ground of maintainability of the complaint, jurisdiction 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 while the anticipated date for possession was 31.07.2021, any delays were directly attributable to unforeseen circumstances beyond the respondent's control, including delays in obtaining essential regulatory approvals and, most significantly, force majeure conditions caused by the COVID-19 pandemic. It was then submitted that the respondent had always acted in good faith and had honoured all its contractual commitments and obligations. It had fully adhered to the model Buyer's Agreement as prescribed under the RERD Act. The complainant's assertion that they were charged for a super area instead of a carpet area was based on a misunderstanding of the terms laid out in the Buyer's agreement. The charges for the super area were clearly defined and agreed upon in Clause 1.2 of the Buyer's Agreement dated 06.07.2018. The respondent had not violated any provisions of the RERD Act. Denying

rest of the averments of the complaint, prayer was made for dismissal of the complaint.

4. While reiterating the contents of complaint, learned counsel for the complainants highlighted the main facts of the case. He pointed out that the respondent company, vide letter dated 21.01.2025, purportedly offered possession without obtaining the requisite Occupancy Certificate/ Completion Certificate from the competent authority. It was submitted that as per records available with RERA Punjab, the carpet area of the unit in question is mentioned as 1220 sq. ft. (113.34 Sq. Mtr.), whereas the respondent illegally charged for super area of 1820 sq. ft (169.8 sq. Mtr.), which is contrary to the approved plan and disclosures made at the time of registration. Moreover, as per clause 1.2 of the model agreement also, promoter could only charge for the carpet area and not for the super area. It was submitted that only carpet area is recognized under RERA, and charging for super built-up area was illegal. It was then submitted that despite delay in delivery, the respondent had neither paid delay interest nor refunded the excess amount charged on account of the alleged increase in area. Due to the aforesaid acts and omissions, the respondent company has violated various Sections of the RERA Act, and has indulged in unfair trade practices by charging on the basis of super area instead of carpet area and offering possession without lawful completion. The complainant, therefore, seeks directions against the respondent to pay delay interest on the amount paid till actual legal possession is offered with valid OC/ CC and to refund the amount illegally charged for excess area.

5. On the other hand, learned counsel for respondent contended that upon completion of the tower, an Occupation Certificate was obtained on 26.11.2025 and a provisional possession offer dated 21.01.2025 was issued to the complainant to facilitate interior works and not as legal delivery of possession. Despite repeated requests to take formal possession, the complainant failed to comply, making her liable for holding charges as per Section 19(1) of the Act. It was then contended that any claim for delayed interest under Sections 18 or 19 was untenable, as the complainant herself defaulted in making payments under the construction-linked plan, which affected the project timeline. The delay was due to the reasons beyond its control, including regulatory and procedural requirements. The complaint being without merit deserves to be dismissed.

6. This authority has carefully considered the rival contentions of both the parties and perused the record of the case. Upon doing so, the Authority has observed that complainant has deposited a major amount of the total sale consideration as per the agreement and has thus fulfilled majority of her payment obligation. Whereas the respondent on the other hand has failed to deliver possession within the stipulated timeline again in accordance with the agreement. However, the argument advanced concerning seeking refund of the amount charged on account of super area is found to be without any merit or substance in view of the fact that there is an agreement dated 06.07.2018 executed between the parties and its terms and conditions are since binding upon them. In the said agreement itself the nature of total area and the manner it is to be sold has been clearly and categorically mentioned with its description given

separately for both carpet area and super area. The measurement of both carpet area and super area has also been mentioned clearly those being 1220 sq. ft. and 1820 sq. ft. respectively. The total sale consideration of the apartment including GST etc. 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'. This debars the complainant to stake his claim for the refund of whatever amount she has paid as per the terms and conditions of the buyer's agreement between them. Hence, the much-emphasized contention on the part of complainant arguing that the promoter could only charge for the carpet area and not for the super area holds no merit and is accordingly rejected. Besides, question of any refund whatsoever arises only in case allottee intends to withdraw from the project in accordance with the provisions of Section 18 of the Act or at the most can ask for adjustment of the amount if charged or paid against the terms and conditions of the agreement.

7. Whereas, respondent has not been able to show if it possessed the completion certificate before issuance of offer of possession to the complainant which was admittedly received by the respondent on 26.11.2025 while the alleged offer was made on 21.01.2025. As such respondent could not have made offer of the delivery of possession of the unit in question in the absence of OC/CC. Whatever offer even if being made without there being completion certificate with the respondent it is not considered to be valid offer. It

has also been so observed by the Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, Civil Appeal Nos.2809-2810 of 2024 decided on 6 September, 2024** that in the absence of requisite completion certificate the offer of possession even if made is not valid one. In the case in hand, no completion certificate was of course there with the promoter. As such even if any offer allegedly made by the respondent for delivery of possession in an incomplete project was not a valid offer. In the given circumstances, it also cannot be held that the said project was complete.

8. As per Clause 7.1 of the Buyer's Agreement, the promised date of delivery of possession was 31.07.2021. The complainant has already paid a substantive amount of Rs.54,53,440/-towards the sale consideration of the unit to the respondent. The Act provides for payment of interest in case of delay in handing over of possession and the right of claiming interest on the delayed possession has been conferred upon an allottee by the provision of Section 18 of the Act which is an indefeasible right. It stands established that the respondent promoter has failed to deliver possession of the unit within the agreed time frame as stipulated in the Buyer's agreement, i.e., on or before 31.07.2021, thereby violating the provisions of Section 18(1) of the Act. The delay in handing over possession is evident from the fact that the Occupancy Certificate for the project was obtained only on 26.11.2025, i.e., much beyond the committed date of possession. The period of delay is, therefore, to be reckoned from 31.07.2021 (the agreed date of possession till fresh offer is made upon obtaining Occupancy Certificate. It is accordingly held that the arguments raised on behalf

of the respondent are not valid; and there has been a delay on the part of the respondent in handing over possession of the apartment to the complainant as agreed. The right of claiming interest on the delayed possession has been conferred upon an allottee by the provision of Section 18 of the Act which is an indefeasible right. Violation of Section 18(1) of the Act is therefore established; and the complainant is entitled to the relief provided therein. 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.”

Accordingly, the delay is attributable to the respondent and the claimant is held entitled to interest for the period of delay.

9. As an outcome of above discussion, the complaint is partly allowed. Accordingly, the complainant is held entitled to interest for the delayed period under the provisions of Section 18(1) read with Rule 16 of the RERD Act at the rate prescribed in the Punjab State Real Estate

(Regulation and Development) Rules, 2017 (today's highest MCLR rate plus 2%) w.e.f. 31.07.2021 till fresh offer is made and shall be payable by the respondent. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. Respondent is directed to issue fresh offer of possession within two months asking for the remaining payment to be made by the complainant after deducting the interest on the already paid amount as awarded to the complainant on the deposited amount out of the sale consideration mentioned in the buyer's agreement.

10. Before parting with this order, as was noticed one thing is more or less shown to be there that as was agreed by the parties that offer of possession would be made unconditionally subject to adjudication on the matter of payments left to be made by the parties to each other as per the terms and conditions of the agreement if any, later depending on the final orders of the case but since the said direction was not adhered to by the respondent, separate proceedings under Chapter VIII for non-compliance of direction/ order of the Authority u/S 63 RERD Act are liable to be initiated against the promoter/ respondent. Registry is accordingly directed to initiate separate proceedings against the respondent/ promoter for violation of Section 63 of the Act.


(Arunvir Vashista),
Member, RERA, Punjab