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

Complaint No. RERA/ GC No.0188 of 2024
Date of filing: 23.05.2024
Date of decision: **13.05.2026**

Paras Nayyar, resident of # 167-C Rattan Nagar, Patiala, Punjab
...Complainant

Versus

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

... Respondents

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

Present: Mr. Mohd. Sartaj Khan, Ms. Divya Jyoti and Ms. Akshra, Advocates representatives for the complainant
Mr. Sanjeev Sharma, Advocate representative for respondent

ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) seeking possession of the allotted unit alongwith interest for the delayed period relating to a RERA registered project "The Lake" situated at Omaxe New Chandigarh developed by the respondent company.

2. The gist of the complaint is that complainant was allotted a residential Unit 2BHK bearing No.TLC/VICTORIA-C/SECOND/204,

having Super/ Carpet Area of 1260/807 sq. ft. in Tower VICTORIA-C in the project 'The Lake' situated at Omaxe New Chandigarh. The total price of the unit in question was Rs.42,36,209/- as per schedule C-1 of the Buyer's Agreement dated 08.03.2021. The respondent had charged for total super area i.e. 1260 Sq. Ft. @ 4730 per Sq. Ft. as per clause 1.2 of the Buyer's Agreement and accordingly complainant had paid an amount of Rs.36,56,999/- till date as per the agreement. As per Clause 7.1 of the Buyer's Agreement dated 08.03.2021, the possession of the Unit was to be delivered on 31.07.2023. But the respondent company had not offered possession till date. The project was nowhere near completion and was thus delayed. Neither the interest for delayed possession nor any compensation had been paid by the promoter till date. It was then submitted that the respondent company was to provide the Carpet area measuring 74.97 sq. meters (807 sq. ft.) and the same area was registered with RERA Authority records also but the complainant had been illegally charged for Super area of 1260 sq. ft. instead of Carpet area by manipulating RERA Model Agreement. In this way respondent had charged Rs.21,42,690/- in excess from the complainant by making misrepresentation and without lawful authority. Till date, the respondent company had neither adjusted the excess amount paid nor refunded the same to the complainant despite repeated requests in this regard. Hence the complaint.

3. 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 complainant reiterating the contents of the complaint.

4. In the reply filed on behalf of the respondent, 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 agreed date for possession was 31.07.2023, whatever delay was there that was 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 he was charged for a super area instead of a carpet area was based on a misunderstanding of the terms laid down 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 08.03.2021. The respondent had not violated any provisions of the RERD Act. Hence while denying rest of the averments of the complaint also, a prayer was made for dismissal of the complaint.

5. While putting forth the case of complainant it was contended by the learned counsel that in his present complaint, he seeks 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 him 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 807 Sq. Ft./ 74.97 Sq. Mtrs. As

per the buyer's agreement dated 08.03.2021 the possession of the completed apartment/ unit was to be delivered on 31.07.2023, but no OC has been obtained till date by the promoter. Hence, the complainant was 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. The complainant had already made a substantive payment towards the total sale consideration. The complainant, therefore, seek 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.

6. On the other hand, learned counsel for respondent contended that partial completion certificate qua the unit in question was received on 20.12.2023 and the offer of possession was duly made on 11.03.2024, allowing the complainant to carry out fit- outs, but he did not come forward to take physical possession. It was then submitted that the respondent had fully adhered to the model Buyer's Agreement as prescribed under the RERD Act. The charges for the super area were clearly defined and agreed upon in the Buyer's Agreement dated 08.03.2021. It was then contended that the alleged delay in completion of the unit allotted to the complainant had been caused due to *force majeure* circumstances arising from the Covid pandemic and without any fault on the part of respondent company. It was thus finally submitted that claims made by the complainant were not only unjustified but were meritless as well. His 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 complainant. 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 complainant for the same is found to be perfectly valid and justified by virtue of the provisions of Section 18 of the Act.

8. The more or less admitted facts of the case are that the complainants were allotted a residential Unit 2BHK bearing No.TLC/VICTORIA-C/SECOND/204, having Super/ Carpet Area of 1260/807 sq. ft. in Tower VICTORIA-C in the project 'The Lake' situated at Omaxe New Chandigarh. The total price of the unit in question was Rs.42,36,209/- as per schedule C-1 of the Buyer's Agreement dated 08.03.2021. Further that the complainant had already paid an amount of Rs.36,56,999/- out of the total sale consideration. As per Clause 7.1 of the said agreement, the possession of the Unit was to be delivered on 31.07.2023. But the respondent company had not made any valid offer of possession till date and the project had been delayed for a period of about three years.

9. While arguing on question of whether the alleged offer made by promoter on 11.03.2024 was valid or not it was submitted that as per Section 19(1) of the Act the word mentioned there is Occupancy Certificate after issuance of which every allottee was supposed to take physical possession of the booked apartment within a period of two months thereof. And in the case in hand there was no Occupancy Certificate issued to the promoter while alleged offer of possession was

made which cannot be considered to be a legal and valid offer. This contention raised on behalf of the complainant finds force as certainly it is the Occupancy Certificate which is supposed to be there with the promoter before making an offer to the allottee for taking possession of the booked apartment. Besides, the partial completion certificate which respondent/ promoter possessed at the time of making offer to the complainant nowhere mentions if the premises i.e. the Tower-C in the project named 'The Lake' was fit to be occupied. Rather in the terms and conditions of the partial completion certificate issued on 20.12.2023 it is being clearly mentioned that the company/ allottees shall be bound to construct SCOs/ Booths/ Plots/ Flats after getting the building plans approved and shall obtain Occupation Certificate from competent authority before occupying the same. As such there seems to be no idea of putting this condition at serial no. xi in a partial completion certificate issued by the competent authority to its project 'The Lake'. Accordingly, the offer made by the promoter vide its letter dated 11.03.2024 and thereafter on different dates could not be considered to be the valid and legal offer without there being an Occupancy Certificate with the promoter company that declares the premises to be fit for occupation. 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.

10. As already noticed, complainant fulfilled his obligations of making the requisite payment of the unit in question to the tune of Rs.36,56,999/- i.e. more than 80 % of the sale consideration and the balance amount was payable at the time of delivery of possession. As no valid offer for possession had been made on behalf of the respondent/promoter by the stipulated date, there was no question of complainant to make the balance payment out of the sale consideration. Therefore, no fault is attributable on the part of the complainant in his obligation under the allotment letter executed between the parties in relation to the sale of the unit in question. The respondent/builder was duty bound to fulfil its obligation of completing the project and handover the possession of the unit in question to the complainant on or before 31.07.2023 as stipulated in the allotment letter executed between the parties. But 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.

11. 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

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 claimant is held entitled to interest for the period of delay.

12. However, not much weight is found in this contention of the learned counsel for the complainant that no super area could be sold and what could be sold is only the carpet area after the passing of the Act as per the model agreement provided in the Form Q of the rules framed under RERA. As such there is no concept of super area nor anything could be charged on the basis of super area or super structure. The model agreement provided in the Rules does not seek to take away the freedom of contract by putting restraints on it. It only highlights the important and necessary contents of an agreement between buyer and builder for the sake of bringing clarity and transparency in a sale transaction. The Form Q is the model agreement

for sale provided under the rules. Its highlighted term i.e. term no.1.2 only requires that the total price for the apartment/ plot based on the carpet area is to be clearly and distinctly mentioned by giving its break-up and clear description so that break-up of the consideration charged separately for the separate nature of area to be sold is clarified. The model agreement thus does not put any restraint or impose any bar on the nature of area to be sold. Such clarification and description have been made important and essential part of the agreement as any deviation or violation of the terms of agreement by any party could be clearly deciphered that may give rise to certain rights of the aggrieved party to seek compensation etc. as per the provisions of the Act specially u/Ss 12, 13, 14 and 18. In the buyer's agreement executed between the parties 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 complainant to stake his 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. 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. All the terms and conditions of the agreement have to be adhered to and complied with by the parties unless such term and condition is in contradiction and in conflict with the terms mentioned in the model agreement prescribed in Form Q of the RERA rules, 2017 meaning thereby those are not in derogation or inconsistent with the terms and conditions set out by the Act and the Rules and Regulations made thereunder. Complainant side has not been able to show if referred demand or charges were in derogation of the terms and conditions mentioned in the Form prescribed. Rather another rule of mercantile jurisprudence *'Caveat emptor'* also applies in the matter which means **'buyer the beware'.** So, complainant should have been vigilant enough about the terms and conditions duly mentioned in the agreement.

13. But definitely in the opinion of this bench nothing can be charged for an unilateral increase either in the carpet area or in super area if so has not been agreed upon by the parties in the buyer's agreement that has to be ofcourse in the form as prescribed in accordance with Section 13(2) of the Act. RERA rules, 2017 providing

model agreement seek to supplement Section 13(2) of the Act that requires an agreement to be in the form as may be prescribed which shall specify the particulars of development of the project including the construction of building and apartments, alongwith specifications and internal development and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed. Model agreement thus seeks to guide the parties for the sake of clarity of things agreed upon so that in case of dispute between them and the rights of the parties thereof could be properly adjudicated upon and determined. It is thus held that all the terms and conditions of the agreement are binding and nothing can be charged over and above those unless those are against the terms provided in the said Form Q or in conflict with those.

14. 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 complainant after obtaining the requisite completion/ occupancy certificate from the Competent Authority. Further, the respondent shall pay to the complainant 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 amount paid by the complainant to the respondent/ promoter, for the delay in

handing over possession w.e.f. 31.07.2023 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 and pending payments thereof, if any. The conveyance deed shall be executed thereafter in accordance with law within time-frame prescribed.

15. The respondent is directed to make the above payment 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. Thereafter the said amount is to be recovered 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 if not paid as directed. And, then the Secretary of this Authority shall be issuing "Recovery Certificate" as per rules and respondents shall be rendering themselves liable for any other coercive action as prescribed by the Act and rules made thereunder. The complainants and the respondent are further 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