

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

Complaint No.0269 of 2024
Date of Institution: 01.08.2024
Dated of Decision: ~~20~~.03.2026

1. Rajinder Sachdeva and
2. Archana Sachdeva,
Both at H. NO. D-16, SJVNL Colony, Jhakri, Tehsil Rampur, Shimla,
Himachal Pardesh -172201

....Complainants

Versus

M/s Omaxe Chandigarh Extension Developers Pvt Ltd, THROUGH
DIRECTORS, 10, LOCAL SHOPPING CENTRE, 10, LOCAL SHOPPING
CENTRE, New Delhi- 110019

....Respondent

- Present:
1. Shri Mohd. Sartaj Khan, Advocate, for the complainants
 2. Shri Tejeshwar Singh, Advocate, for the respondent

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 01.08.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 Respondents be directed to pay interest for the delayed possession as per RERA Rules on amount paid i.e. Rs.1,23,43,700/- till the date of offer of Actual Legal Possession after obtaining OC/CC from the Competent Authority.

1.2 Respondents be directed to charge only for "Actual Carpet area" i.e. 1845 Sq. Ft./ 171.4 Sq. Mtr. and not for the Super area i.e. 2760 Sq. Ft./

256.41 Sq. Mtr. as per layout/ disclosure made before RERA Authority.,

1.3 Respondent to be directed to refund the amount for excess area of 915 Sq. Ft. area amounting to of Rs.38,33,850/- which has been charged illegally for super area instead of carpet area along with applicable interest as per RERA norms.

1.4 Respondent 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.

1.5 Respondent be directed to Pay Rs.1,50,000/- as cost of litigation.

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

2.1. In this case, complainants are subsequent allottees as they have purchased the residential flat from the erstwhile allottee i.e. Mr. Manav Narang and Mr Bharat Narang who was allotted residential Unit 4-BHK bearing No. TLC/EMERALD-B/THIRD/302, having Super Area of 2760 Sq. Ft./256.41 Sq. Mtr. in Tower EMERALD-B in the Project named "THE LAKE", situated at Omaxe New Chandigarh.

2.2 The booking of the above said unit was made vide Application No. TLC/859 accordingly and Buyers Agreement was executed on 14.10.2015. Total price of the unit was Rs.1,40,81,520/- and the total BSP of the said unit as per Annexure-B (Part-I) of the Buyer's Agreement dated 14.10.2015 was Rs. 1,15,64,400/-. The Respondent has charged for total Super Area i.e. 2760 Sq. Ft./256.41 Sq. Mtr. at the price of Rs.4,190/- Sq. Ft. as per Annexure-B (Part-II) of the Buyer's Agreement and accordingly complainant has paid an amount of Rs.1,14,09,050/- plus GST of Rs. 9,34,650/- till date. Copy of the Buyer's Agreement & Copy of Statement Schedule dated 13.10.2023 is annexed as ANNEXURE C-1 & ANNEXURE C-2 respectively.

2.3 As per request for "assignment of allotment right" dated 12.10.2023, further an agreement dated 12.10.2023 was signed by the erstwhile allottee and subsequent allottees and the same was confirmed by the Authorised Signatory of the Respondent Company. On the basis of the request form & documents presented, the assignees i.e. Mr. Rajinder Sachdeva and Mrs. Archana Sachdeva shall henceforth be deemed as the subsequent Allottee(s) /buyer(s) for the purpose of already executed Buyer's Agreement/allotment letter dated 14.10.2015. In which it was clearly mentioned that "this endorsement sheet shall form integrated part of the agreement/ allotment letter". Subsequent to the execution of the request letter, the complainants have also paid a total booking amount of Rs.32,25,680/- to the respondent company till 01.10.2023. Copy of request form & agreement endorsement form is annexed as ANNEXURE C-3 (Colly).

2.4 The tripartite agreement was executed among erstwhile allottees, bank i.e. SBI and the respondent company under Subvention Scheme. As per subvention scheme the Promoter paid Rs.90,000/- per month in the form of Pre - EMIs to the bank, which has been stopped immediately, as the loan account has been closed before transfer of property i.e. 12.10.2023. Thus, respondent company is saving the above mention Pre EMI amount.

2.5 After execution of request form and agreement endorsement form dated 12.10.2023 which eventually endorsed the change of ownership, the complainants cleared the outstanding loan amount of Rs.80,70,000/- to the relevant bank i.e. SBI on behalf of the erstwhile allottees.

2.6 After execution of request form and agreement endorsement form dated 12.10.2023 it was mandatory for the respondent company to execute written agreement for sale with the assignees i.e. Mr. Rajinder Sachdeva and Mrs. Archana Sachdeva. By not executing the mandatory agreement for sale the respondent company has clearly violated norms of Section 13 of the Rera Act, 2016.

2.7 As per Clause 40(a) of the Buyer's Agreement dated 14.10.2015 the possession of the unit was to be delivered within 36 months i.e. on 15.10.2018 and the Respondent Company did not offer any legal possession till date. Neither the interest for delayed possession nor any compensation has been paid by the promoter to the complainant till date. No occupancy certificate/completion certificate has been obtained by the promoter till date.

2.8 The Respondent Company was to provide and charge for the Carpet area measuring of 171.4 Sq. Mtr /1845 Sq. Ft. in Tower EMERALD-B as per approved layout plan & disclosure made before RERA Authority while registration of the project but the complainant has been illegitimately charged for Super Area i.e. 2760 Sq. Ft./256.41 Sq. Mtr. and has charged extra amount in excess for 915 Sq. Ft. Further the respondent company instead of resolving the issue threatened to cancel the allotment/Buyer's Agreement. Copy of Rera records are annexed as Annexure C-5 (Colly).

2.9 The Complainants have contacted the respondent via e-mails and in person to get the actual legal possession along with delayed period interest of the above said unit. The respondent company had itself promised the complainant that the legal possession of the unit will be delivered by December, 2023 but unfortunately failed to deliver. Copy of the record of e-mails are marked and annexed as Annexure C-4 (Colly).

2.10 The complainant also stated that the Respondent Company has not refunded the excess amount of Rs.38,33,850/- to the complainants. The model Buyer Agreement is prescribed in Punjab State Real Estate (Regulation & Development) Rules, 2017 whereby it was mandatory for all the promoters to execute the same with the allottees while selling any unit/plot/flat etc. As per Clause 1.2 of the model agreement "Promoter can only charge for the carpet area" and not for the super area.

3. Notice of this complaint was issued to respondent. Shri Tejeshwar Singh, Advocate appeared on behalf of respondent on 09.09.2024 and submitted his memo of appearance. Thereafter, reply dated 29.01.2025 was submitted by respondent on 27.03.2025 raising preliminary objection that complaint before this Authority, besides being misconceived and erroneous, is not tenable in the eyes of law. The reply is summarized below: -

3.1 Respondent stated that the present dispute pertains to Unit No. TLC/Emerald-B/Third/302 having a super area of 2760 sq. ft. This Unit was earlier booked and stood in the name of Mr. Manav Narang and Mr. Bharat Narang (Original Allottees). They had executed a Buyer's Agreement dated 14/10/2015 with the Respondents (Annexure C-1). It is pertinent to note that the Original Allottees had made continued defaults in their payment obligations in contravention of the terms and conditions of the Buyer's Agreement. Resultantly, a huge amount on account of delayed payments interest to the tune of Rs.13,10,663/- had accrued and became payable by the Original Allottees.

3.2 In September 2023, the Original Allottees Mr. Manav Narang and Mr. Bharat Narang approached the Respondent Company along with Mr. Rajinder Sachdeva and Mrs. Archana Sachdeva (Complainant) and requested for transferring the booking/allotment of the unit in favour of the Complainants. They further requested that the aforesaid delayed payments interest may kindly be waived of by the Respondent Company, in exchange for which, they shall not claim, any compensation/interest/penalty for any alleged/perceived delay in possession, and further, the new proposed allottees (Complainants) shall ensure full compliance with the payment obligations under the Agreement. The Respondent Company agreed to this request for transfer of allotment/booking, on the specific condition that no compensation/interest shall be claimed against it on account of any perceived delay in possession and future payments shall be honoured in a timely

manner, as assured and promised by the Complainants and Original Allottee.

3.3 The Original Allottees and the Complainants submitted the formal Request for Assignment of Allotment Rights in the name of the Complainants from the Original Allottees. The same has been annexed by the Complainants as Annexure C-3. Additionally, the following documents were also submitted/executed by the Complainants and Original Allottees: -

a) Joint Affidavit by the Complainants and Original Allottees

b) Affidavit-cum-undertaking by the Complainants

Wherein Complainants expressly acknowledged that they were fully aware that the Respondent Company had waived the delayed payment interest payable by the Original Allottees and this waiver was granted in exchange for the Complainants and the Original Allottees expressly relinquishing and waiving all claims for compensation and/or interest on account of any alleged or perceived delay in possession, as well as any claims related to subvention, loan, or EMI interest.

3.4 In affidavit, Complainants have confirmed that before applying for the assignment of allotment, they have properly seen the tentative plans, designs, specifications of the unit and physically inspected the project and are duly aware about the development status. Further, para 10 states that the Complainants understand and accept that the construction and development shall be reckoned from the date of assignment (and not from the date of the original agreement), and further, they have verified the development status and are aware that there may be some delays. They further accepted and acknowledged that notwithstanding the original agreement, they shall not claim, any compensation of interest on account of any alleged/perceived delay in possession. Relevant para of both joint affidavit/affidavit cum undertaking are not reproduced here for sake of brevity.

3.5 Furthermore, a settlement deed was also executed between the Original Allottees and Respondent Company. Under the Settlement Deed, the Original Allottees also included their nominees and assignees. It was agreed by them that they shall not claim any amount on account of delay in possession in exchange for waiver of delayed payment interest of Rs.13,10,663/-. A copy of the Settlement Deed dated 28.09.2023 is annexed herewith as Annexure R-6.

3.6 In view of the aforesaid documents and request for assignment transfer of booking/allotment received by the Respondent Company, an endorsement was made in the existing Buyers Agreement on 12/10/2023 whereby the Agreement was assigned in favour of the Complainants (Annexure R-7). Respondent reproduced clause 1,3,4,5,7,8,9,14,16,30, 32,34,40(a) and 40(b) of Allotment letter dated 14.10.2015. For sake of brevity, the same is not reproduced here.

3.7 The respondent stated that as per Clause 7 of the Allotment Letter, the Complainants agreed to pay the price of the Unit based on the super area, which encompasses the common areas within the project. Further, in pursuant to Clause 8 of the Allotment Letter, the Complainants expressly acknowledged and agreed to the calculation method used for determining the super area of the Unit. Additionally, under Clause 9, the Complainants consented to the payment plan detailed in Annexure-B of the Allotment Letter, which explicitly specifies the super area of the Unit and the corresponding price calculated based on that super area of the Unit i.e. 2760 sq. ft. (256.41 sq. meters).

3.8 Vide letter dated 05.03.2026, the complainant has requested to withdraw the following two prayers of the complaint filed:

1. Delayed period interest from 14.10.2018 to 27.09.2023 i.e. from the agreed date of possession in the agreement till the date of submission to Omaxe for endorsing the transfer of property in a

favour of complaint.

2. Refund of extra amount charged by Omaxe towards sale of unit on super area instead of carpet area.

Letter dated 05.03.2026 is reproduced as under:

No. RS/PF/OMAXE/TLC-859-T1/RERA/101-02 ²³ Dated 05/03/2026

10
Sh. Binod Kumar Singh Ji,
Hon'ble Member, RERA, Punjab,
Chandigarh.

Subject :- Regarding complaint no. GC No. 0269 of 2024 - Withdrawal of two appeals and Prag for delayed interest and earliest Possession thereof (Property reference TLC/859/T1 of OMAXE at New Chandigarh).

Hon'ble Sir,

With due regards and humble Submission, we are ready to withdraw the following two appeals :-

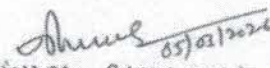
1. Delayed Period Interest from 14/10/2018 to 27/09/2023 i.e from the date of Possession in the agreement to the date of Submission to OMAXE for transfer of Property in our name.
2. Refund of extra amount charged by M/s OMAXE towards Sale of unit on super area instead of Carpet area

Therefore the delayed period interest from the date of Submission of transfer document i.e 28/09/2023 to the date of Possession by the builder is acceptable to us.

It is further submitted that a transfer fee of Rs. 3,25,680/- was charged by the builder.

Your kind honour is requested to decide the matter as deemed fit to the authority and it is humbly requested that the Possession may be secured immediately on "Occupation Certificate" by the OMAXE, as the undersigned is a retired Senior level officer from Govt. of India and in need of this residential Property please

Thanking you in anticipation and
With humble Submission,
Sincerely yours


(RAJINDER SACHDEVA)
GC No. 0269 of 2024
Tel. No. 9418075277
SACHDEVA.SOVNL@GMAIL.COM

CC:- Adv. Sartaj Khan for kind information please.

4 Complainants filed their rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The counsel of the complainants stated that the complainant is well covered under the definition of the 'Allottee' as per section 2(d) of the RERA Act, 2016. The complainant also referred the decision of the Hon'ble Supreme Court in the case titled "Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna", bearing civil Appeal no. 5785 of 2019, has held that the incorporation of one-sided and unreasonable clauses in the Apartment Buyer's agreement constitutes unfair trade practices. Thus, the Developers cannot compel apartment buyers to be bound by one-sided contractual terms contained in the Apartment Buyers Agreement.

5 The undersigned heard the arguments of both the parties on the stipulated date.

5.1 Thus, in view of the letter dated 05.03.2026 of complainants, relief sought by complainant mentioned at para 1.2 & 1.3 in the initial para has been resolved and there is no need for adjudicating this relief and accordingly, it is disposed of.

6. Regarding the payment of interest on the amount of Rs.1,23,43,701/- paid by complainant to respondent towards the period of delay in handing over possession of the apartment allotted to complainant, as per clause 40(a) of the allotment letter dated 10.06.2019 possession of the apartment was to be delivered by April, 2022. It is the consistent case of the complainant that respondent failed to deliver possession of the apartment within the said timeline mentioned in Clause 40(a) of the agreement/allotment letter. Even Counsel for respondent has not produced any Occupancy/Completion Certificate issued by the Competent Authority.

6.1 From the above, it is concluded that respondent failed to deliver possession as per the terms of the allotment letter (Annexure C-1) by April, 2019. Thus, this case is accordingly squarely covered within the definition of Section 18 of the Act, and it is held that complainant is entitled to interest for the delay period from transfer/assignment of right of Residential Unit 4-BHK bearing No. TLC/EMERALD-B/THIRD/302 in favour of the complainants i.e. 12.10.2023 till the date of handing over legal possession of the apartment to complainant.

7. As a net result of the above discussion, this complaint is partly allowed in favour of the complainant and against the respondent. Respondent is directed:

7.1 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 14.10.2015 after receiving the completion certificate from the competent authority.

7.2 As a net result of the above discussion, this complaint is accordingly 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 Rs.1,23,43,701/- paid by the complainant w.e.f. 12.10.2023 the date on which complainants deemed as subsequent allottees till date of this order at the first instance and in case of payment made after possession date i.e. 12.10.2023 in that case from date of payment to 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 from the date of receipt of this order.

7.3 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 Rs.1,23,43,701/- plus payment made by complainants after 12.10.2023 from the date of this order till the date of delivery of legal valid possession of the flat bearing No. TLC/EMERALD-B/THIRD/302, in Tower EMERALD-B in the project 'THE LAKE' situated at Omaxe New Chandigarh and submit the compliance report.

8. It may be noteworthy that in case compliance report is not submitted by the respondent 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 the Act of 2016.

9. The issue of cost of litigation has not been pressed during the course of arguments, so it is not being adjudicated upon.

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



(Binod Kumar Singh)
Member, RERA, Punjab