

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

Complaint No.0332of 2024

Date of Institution: 13.09.2024

Dated of Decision:14.01.2026

Shri Udaypal Singh, House no. 13, Police Station Complex, Chandigarh
....Complainant

Versus

M/s Omaxe Chandigarh Extension Developers Pvt Ltd, India Trade
Tower, Ist Floor, Madhya Marg Ext. Road, New Chandigarh, S.A.S
Nagar, Mohali- 140901
....Respondent

Present: 1. Shri Shubnit Hans and Shri Rahul Diwan, for the complainant
2. Shri Arjun Sharma for the respondents

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 13.09.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

- 1.1 Pass an appropriate order directing the Respondent Company to handover the valid legal physical possession of the unit of the Complainant;
- 1.2 Pass an appropriate order directing the Respondent Company to pay interest at the rate of MCLR + 2% to the Complainant on the amount paid by the Complainant from the deemed date of possession (calculated from the date of payment of booking amount i.e. February 2018) till the date of realization, as per the provisions of RERA Act;

1.3 Pass an appropriate order directing the Respondent Company to withdraw the illegal demands raised by the Respondent Company towards PLC, Club membership charges etc. and refund the said amount of Rs. 5,09,220/- and Rs. 1,50,000/- respectively with interest as per the provisions of the RERA Act.

1.4 Pass an appropriate order directing the Respondent Company to withdraw the illegal demand raised by the Respondent Company towards Car Parking Charges

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

2.1 The Complainant herein i.e., Sh Udaypal Singh, a Government Servant, (hereinafter referred to as '*Complainant*') has preferred the present complaint against 'M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.' having its registered office at 10, Local shopping Centre, Kalkaji, New Delhi-110019 (hereinafter referred to as '*Respondent Company*').

2.2 In August 2014, the Complainant and his Wife i.e., Sunita Singh (hereinafter referred to as "Wife"), had booked 3 Residential Apartments/Unit in the group housing project of the Respondent Company namely "*THE LAKE*" with the following specifications:

- i TLC/161- 4BHK Residential Apartment TLC/EMERALD-A/EIGHTH/804 (having Super area Approx. 2300 Sq. Ft.) booked by the Complainant i.e., Udaypal Singh.
- ii TLC/158- 3BHK Residential Apartment TLC/CASPEAN-E/TENTH/1002 (having Super area Approx. 1920 Sq. Ft.) booked by the Complainant's Wife i.e., Sunita Singh.
- iii TLC/160- 4+1BHK Residential Apartment TLC/EMERALD-A/EIGHTH/801 (having Super area Approx. 2760 Sq. Ft.) booked by the Complainant's Wife i.e., Sunita Singh.

2.3 The amount given at the time of the booking for the above-mentioned Residential Apartment/Units was Rs 5,00,000/- towards each unit, as per the payment plan given by the Respondent Company. The Complainant and his Wife had paid a substantial amount of money.

Details of the payments were made through Cheques are as under:

- a) Rs. 21,88,046/- for 4BHK flat TLC/161-TLC/EMERALD-A/EIGHTH/804 till 18.03.2017,
- b) Rs. 12,59,723/- for 3BHK flat TLC/158-TLC/CASPEAN-E/TENTH/1002 till 14.09.2015 and
- c) Rs. 72,52,841/- for 4+1BHK flat TLC/160-TLC/EMERALD-A/EIGHTH/801

2.4 On 18.03.2017, the Complainant and his Wife had requested the Respondent Company to cancel the 3BHK Residential Apartment/Unit TLC/158- TLC/CASPEAN-E/TENTH/1002 (Booked in the name of Complainant's Wife), and to adjusted the total amount in the other two booked units i.e. amount of Rs. 6,29,233.35/- to 4BHK Residential Apartment/ Unit TLC/161-TLC/EMERALD-A/EIGHTH/804 (Booked in the name of the Complainant) and the remaining amount of Rs. 6,29,223/- to 4+1BHK Residential Apartment/Unit TLC/160- TLC/EMERALD-A/EIGHTH/801 (Booked in the name of Complainant's Wife) out of the total amount of Rs. 12,59,723/- paid by the Complainant's Wife. The same has been reflected in the Statement of Account dated 21.08.2024 issued by the Respondent Company. Further, on 19.09.2017, the Complainant once again requested the Respondent Company to cancel the booking of the 4BHK Residential Apartment/Unit TLC/161- TLC/EMERALD-A/EIGHTH/804 (booked in the name of the Complainant) and the Complainant also requested that the total amount already paid i.e. Rs.21,88,061/-, be transferred to the 4+1BHK Residential Apartment/Unit TLC/160- TLC/EMERALD-A/EIGHTH/801 (booked in the name of the Complainant's Wife)

2.5 As per submission of the complainant, the Basic Sale Price (BSP) of the 4+1BHK Residential Apartment/ Unit TLC/EMERALD-A/EIGHTH/801 (hereinafter referred as "Apartment/Unit") was Rs.1,01,84,400/- (@Rs.3690/ Sq. Ft.) and the Complainant was given a discount @6% on the BSP of the Apartment/ Unit. After the said discount, the BSP of the said unit came down to Rs.95,73,336/-. The Complainant also submitted that he had paid an amount of Rs.32,49,200/- in cash out of BSP of Rs.95,73,336/- towards payments of the units under multiple heads of payments thereof, for the above mention Apartment/Unit. The same can be established from the fact that as per the brochure the unit was being sold at Rs.3690/-per Sq. Ft. However, to adjust the cash component, the Respondent asked us to pay @Rs.2327/- per sq. ft. for the unit booked and remaining was paid in cash as per the rate of Rs.3690/- per sq. ft. That the net BSP of the said unit was fixed at Rs.63,75,122/- after paying Rs.32,49,200/- in cash.

2.6 The Complainant submitted that he had paid all the amounts on time and as demanded by the Respondent Company till date and had made all the payments as per the payment plan opted by him and as stated in the Agreement for Sale. It is reiterated that the Complainant has till date paid an amount of Rs. 72,52,841/- (Rupees Seventy Two Lakh Fifty Two Thousand Eight Hundred and Forty One Only), through Cheques, as reflected in the Statement of Account issued dated 21.08.2024, issued by the Respondent Company.

2.7 In 2019, on request the Apartment/Unit was transferred from the Complainant's wife to the Complainant as the Complainant had to apply for a Home Loan towards the Unit 4+1BHK Residential Apartment/ Unit TLC/EMERALD-A/EIGHTH/801, retained for living with family after retirement.

2.8 The complainant further submitted that after multiple requests and visits by the Complainant, the Respondent Company executed the

'Agreement for Sale' (BBA) with the Complainant on 30.04.2019 wherein it was specifically stated in Clause 7.1 that the Respondent Company assures to hand over possession of the Said Unit on 31st July 2021. The relevant portion of the said clause is reproduced herein:

"7.1 Schedule for possession of the said Unit- The Promoter agrees and understands that timely delivery of possession of the Said Unit is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the Said Unit on 31st July, 2021..."

2.9 On 14.05.2019, the Complainant entered into a Tripartite Agreement with the Respondent Company and HDFC Bank and had applied for a Housing Loan amounting to Rs.20,00,000/-, out of which only Rs. 9,30,818/- was disbursed in accordance with the demand raised by the Respondent Company, from "Housing Development Finance Corporation Limited (HDFC Bank Ltd), Panchkula".

2.10 The complainant also stated that the Respondent Company had also charged a sum of Rs. 5,09,220/- as Preferential Location Charges (PLC) and had levied Charges in lieu of Club Membership Charges and Parking without providing any explanation or justification. Aggrieved by this unjust charge, the Complainant questioned the Respondent Company, but received no satisfactory response. It is pertinent to state that the Club Membership Charges can only be charged once the Club is operational and as of today, even the construction of the said Club had not been started. Complainant requested that Respondent Company Charges towards PLC, Club membership etc. must be withdrawn and refunded with interest.

2.11 The Complainant has shown his apprehension that the amounts charged by the Respondent Company under the headings of EDC, GST, and other statutory dues, which were supposed to be remitted to the appropriate authorities, have not been paid to the authorities. Respondent Company be put to strict proof for the same.

3.12 As per the BBA dated 30.04.2019 (para 7.1), the legal physical possession of the Residential Apartment/ Unit was to be delivered on 31.07.2021 to the Complainant by the Respondent Company. But it has been more than 10 years from the date of booking and 5 years since the signing of the Agreement and the Respondent has been unable to hand over the possession of the said unit till date.

2.13 The prayer of the complainant is that the Respondent Company has failed to comply with Clause 9.2(ii) of the agreement, which stipulates that the Promoter/Respondent Company is obligated to pay interest to the Allottee/Complainant at the rate prescribed by the Rules of the RERA Act, 2016. Relevant part of Clause 9.2(ii) is being reproduced herein below for the kind reference of the Ld. Authority:

"9.2 (ii)...

Provided that where an allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over of the possession of the unit, which shall be paid by the promoter to the allottee within ninety days of it becoming due."

2.14 That according to Section 18(1)(b) of the RERA Act, 2016 if the promoter fails to complete or is unable to give possession of an apartment, plot or building he shall pay the allottee, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. The Relevant para of Section 18(1)(b) of the RERA Act, 2016 is being reproduced herein for the kind reference of this Ld. Authority:

"18(1)(b) ...

1. *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"*

2.15. In support of his case, the complainant has attached various documents i.e. allotment letter, receipt of paid booking, copy of allotment letter/BBA etc as Annexures.

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

4. The counsel for the respondent company has made his submission and asserted that the contentions of the complainant are contrary to and/or inconsistent with the true and complete facts. The Respondent has agreed that agreement for sale was executed on 30th April 2019 and clause 7.1 therein stipulated possession by 31st July 2021, subject to force majeure events. The learned Counsel for the respondent had submitted the written arguments dated 14.05.2025 on 27.06.2025. In the reply filed on behalf of the respondent the following legal issues have been raised: -

4.1 The counsel of the respondent stated that due to pandemic of Covid-19, the construction work had come to a standstill from 22.03.2020 onwards. The Government of India issued an advisory dated 13.05.2020, by invoking the provision of '*Force Majeure*' under the provisions of 2016 Act followed by an order dated 28.10.2020, issued by this Authority and vide its Clause 4(d) this Authority extended the time limit for statutory compliances.

4.2 The Respondent also submitted that the execution of Agreement for sale was delayed by the Complainant and his wife themselves; hence the complainant's claim for interest from February 2018 is wholly untenable and devoid of merit. The complainant, having executed the said agreement on 30.04.2019 and thereafter acted upon it by entering into a Tripartite Agreement dated 14th may 2019 with the lending institution and availed a housing loan, cannot now attempt to repudiate the terms of the same agreement.

4.3 The clause 9.2(ii) of the Agreement for sale provides that in the event of delay in handing over possession beyond the agreed date, the Complainant shall be entitled to interest at the rate prescribed under the Rules i.e. in accordance with section 18(1)(b) of the RERA Act, 2016 and Rule 16 of the Punjab RERA Rules, 2017. Further on the allegation of the complainant regarding unjustified PLC, Club Member ship and Car parking charges, Counsel of the respondent submitted that in the agreement of sale dated 30th April 2019 charges for PLC, Club membership and car parking was included cost of the unit and these charges are disclosed in the price schedule (Schedule C-1) and accepted by the complainant and therefore, the Complainant is stopped from denying the same.

4.4 Regarding allegation of non-operational of the Club, respondent has submitted that the unit in question forms part of large mega township, which is being developed by the respondent in phases. The club facility specific to "The Lake" society is under construction. However, in the interim and without additional cost, the Respondent has provided the resident of "The Lake" with the access to the operation club facility located in Phase I of the mega township.

4.5 Regarding charges for PLC, Respondent stated that the unit allotted to the Complainant is garden-facing and water-facing which justifying the application of Preferential Location Charges(PLC). Similarly, as per Agreement of Sale, the Respondent is provided covered car parking to the Complainant and charges for PLC and Car parking were transparently disclosed in Agreement for Sale and contractually agreed upon between the parties. Further, the complainant has not placed on record a single document which shows that the Complainant ever objected to levying of afore-said charges. Hence once the Complainant has signed/enter into Agreement for sale, he cannot raise the issues under the doctrine of estoppels. In this case the Complainant is a police officer and as such, is

literate and is aware about the documents he is putting his signature on and, therefore the complainant is now stopped from raising the above said issues under the principal of estoppel.

4.6 The respondent has submitted that the unit in question was allotted under the payment plan which envisaged making of payments in accordance with the prescribed schedule and complainant has not fulfilled the obligations and has not paid the installment on time that had fallen due.

4.7 It is also submitted that there is an arbitration clause in the clause 33 of the agreement to settle disputes or differences arising in any manner touching or concerning the term and conditions of the agreement.

4.8 The present complaint filed by the complainant is abuse and misuse of process of law and, as such, the reliefs claimed as sought for are liable to be dismissed.

5. Complainant submitted written submissions/rejoinder reiterating the contents of the complaint and controverting the contents of the reply submitted by respondent. Complainant has also referred citation of Apex Court namely M/s Newtech Promoters and Developers Pvt Ltd Vs State of Uttar Pradesh & others, M/s Impreia structure Ltd Vs Anil Patni and another and Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt Ltd and Others Vs Union of India.

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

6.1 The contention of the complainant that the Basic Sale Price (BSP) of the 4+1BHK Residential Apartment/ Unit TLC/EMERALD-A/EIGHTH/801 was Rs.1,01,84,400/- (@Rs.3690/ Sq. Ft.) and after the discount of 6%, the BSP of the said unit came down to Rs.95,73,336/-. That the Complainant submitted that he had paid an amount of Rs.32,49,200/- in cash out of BSP of Rs.95,73,336/- towards payments of the units under multiple heads of

payments thereof, for the above mention Apartment/Unit. The submission of the complainant regarding cash payment is not acceptable as no documentary evidence in support of his claim is placed on record. As per para 1.2 of the agreement dated 30 April 2019 total price of the above mention unit is Rs. 82,94,076/- and detailed breakup of the total price is given Schedule - C-2 of the above said agreement out of which complainant has paid Rs.72,52,841/-.

6.2 On the allegation regarding unjustified PLC, Club Member ship and Car parking charges, charges for PLC, Club membership and car parking was included in cost of the unit and these charges are disclosed in the price schedule (Schedule C-1) of the agreement of sale dated 30th April 2019 and agreed upon by the complainant. Hence complainant prayer is not justified.

6.3 On behalf of the complainant, it was pointed out that as per the Allotment Letter, the possession of the apartment was to be handed over within a specified period but the same had not been done, bringing the matter with the purview of Section 18(1) of the Act, and therefore interest for the period of delay was to be paid by the respondent.

6.4 The respondent also argued that pandemic of Covid-19 occurred with effect from March 2020 onwards and possession as claimed by complainants was to be handed over on 31.07.2021 and this Authority had itself granted 6 months reprieve to the promoters. It is further the case of respondent that during the intervening period of March 2020 to July 2021 due to Covid-19, the construction was at snail's pace and respondent could not meet the dead line and prayed for six months exemption from payment of interest for the period of delay. He has also relied upon various orders of the competent Authorities in this regard.

6.5 It is a matter of record that Hon'ble Real Estate Appellate Tribunal, Punjab vide its order dated 22.08.2022 in Appeal No.100 of 2021 titled as "*Hero Realty vs Arun Premdhar Dubey*" held that due to *force majeure* on

account of Covid-19, "a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed". In view of above position the period of 4 months of *force majeure* has to be excluded from the period of delay in handing over possession to the complainant, order accordingly.

6.6 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.

7. As a net result of the above discussion, this complaint is accordingly partly allowed and respondents are directed to:

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 7.2 of the 'agreement for sale' dated 30.04.2019 as the respondent has already received partial completion certificate from the competent authority vide memo no. GMADA/C.A./2025/19381 dated 04.12.2025.

7.2 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 plus two percent i.e. 8.80%) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs. 72,52,841/- paid by complainant with effect from 31.07.2021 till 14.01.2026 i.e. date of order in the first instance (minus four months being force majeure event as discussed in para 6.5 above) i.e. 1190 days {1312 days – 122 days (covid period as discussed above)} and interest amounting is Rs.25,53,795/-) within sixty days from the date of receipt of this order and submit a compliance report to this Authority about releasing the interest amount as directed.

7.3 Further, respondent is also directed to pay interest @ 10.80% from date of issue of order to actual date of possession or two months after getting the completion certificate by competent authority whichever is earlier.

8. It may be noteworthy that in case compliance report is not submitted by the respondents after the expiry of above stated period of sixty 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.

9. 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. Till then the complainant shall have the charge on the allotted unit TLC/EMERALD-A/EIGHTH/801".

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



(Binod Kumar Singh)
Member, RERA, Punjab