

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

Complaint No.0344 of 2024
Date of Institution: 23.09.2024
Dated of Decision: 02.03.2026

1. Shri Bharat Singh Bisht and
2. Mrs Geeta Bisht,
Both resident of House No. 2137, Ist floor, Sector-38C, Chandigarh
....Complainants

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. M. Shahnawaz 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 13.09.2024 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.27,60,066/- till the date of offer of Actual Legal Possession after obtaining OC/CC from the Competent Authority.

1.2 Respondents be directed to refund the amount of Rs.18,69,500/- charged on the pretext of Super Area i.e. 1477 Sq. Ft./137.22 Sq. Mtr. instead of "Actual Carpet area" i.e. 974 Sq. Ft./90.49 Sq. Mtr.3. In light of Section 37 of RERA Act, 2016,

1.3 Respondent be directed to refund the amount of Rs.42,760/- charged illegitimately on account of delayed interest before execution of the Buyers Agreement.

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.

1.6 Any other relief that this Hon'ble Authority may deem fit and appropriate in view of the fact and circumstances of the present complaint.

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

2.1. The complainants had applied for Residential Flat vide Application No. RNC/739 Dated 03.01.2018 and were allotted flat bearing No. RNC/TOWER4/SECOND/204, having Super/Carpet Area of 1477/974 Sq. Ft. (137.22/90.49 Sq. Mtr.) type 3- BHK on 2nd floor in Tower No. 4 along with covered car parking, in the Project named "THE RESORT, PART A", situated at Omaxe New Chandigarh.

2.2 The builder Buyers Agreement was executed on 06.07.2018 and Allotment Letter was issued on 09.07.2018. The total price of the said unit based on area is Rs.54,89,611/-. The Respondent has charged for total Super/Carpet Area i.e. 1477/974 Sq. Ft. at the price of Rs.3716.70/- per Sq. Ft. The breakup of the total consideration amount is in Schedule-C of the

Buyer's Agreement. Copy of the Buyer's Agreement Dated 06.07.2018 & Copy of Allotment Letter Dated 09.07.2018 is annexed as ANNEXURE C-1 & ANNEXURE C-2 respectively.

2.3 The complainants had applied for a home loan and an amount of Rs.44,50,000/- was sanctioned from the SBI Bank on 23.08.2018. That the Complainants has paid an amount of Rs.25,76,959/- plus GST of Rs. 1,83,107/- till 05.09.2024 as and when demanded by the Respondent Company in terms of Buyers Agreement.

2.4 The initial booking of the above said unit was made on 03.01.2018 by paying an amount of Rs.1,00,000/- and subsequently 10% of the BSP (i.e. Rs. 5,78,766/-) in terms of Section 13 was completed till 24.03.2018.

2.5 The Builder Buyers Agreement was executed on 06.07.2018 and unit was allotted on 09.07.2018. That the Respondent has illegally charged an amount of Rs.42,760/- from the complainants on the pretext of delayed interest for not completing the initial 10% of the booking of the unit whereas the complainants were not under any agreement at that point of time. Copy of Account Statement is annexed as ANNEXURE C-3 and Copy of the Statement of Interest Charged from the complainants is annexed as Annexure C-4.

AB 2.6 As per Clause 7.1 of the Builder Buyer's Agreement Dated 06.07.2018 the possession of the unit was to be delivered on or before December 2022 which has been delayed. The Respondent Company did not offer any legal possession till date and the project has been indefinitely delayed. The Promoter had neither paid any interest for delayed possession nor any compensation till date.

2.7 Furthermore, the Respondent Company was to provide and charge for the Carpet Area measuring of 90.49 Sq. Mtr. /974 Sq. Ft. in Tower No. 4 as

per approved layout plan & disclosure made before RERA Authority while registration of the project but unfortunately the Complainants has been illegitimately charged for Super Area i.e. 1477 Sq.Ft./137.22 Sq.Mtr. instead of Carpet Area.

2.9 The model Builder 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. That as per Clause 1.2 of the model agreement "Promoter can only charge for the carpet area and not for the super area." Furthermore, the Former Member of this Hon'ble Authority had initiated proceedings under Section 61 of the RERA Act, 2016 in the case titled as "Kanhaiya Lal Kalra Vs. Omaxe Chandigarh Extn. Developers Pvt. Ltd" in Complaint/RERA GC No.0383 of 2023 and held that the Respondent has violated the statutory provision of Section 13(2) of the Act as the agreement for sale executed inter-parties is not in the prescribed format prescribed as per Form 'Q' in the Punjab State Real Estate (Regulation and Development) Rules, 2017. Copy of the order dated 01.02.2024 is annexed as Annexure C-7.

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

3.1. The complainants approached the Respondent on 03.01.2018 and submitted an Application Form 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 Agreement for Sale under the Additional Down payment Plan/Additional Discount Payment Plan was executed between the parties on 06.07.2018 under which the complainants were allotted Flat no.

RNC/TOWER-4/SECOND/204 having super/carpet area of 1477/974 square feet, in the residential project 'THE RESORT, PART-A' situated in 'Omaxe New Chandigarh', SAS Nagar, Mohali (hereinafter referred to as the "Apartment" or the "Unit"). A copy of the Agreement for Sale dated 06.07.2018 is annexed herewith as Annexure R-3. However, same are not being repeated here for the sake of brevity.

3.3 As per agreement for sale Total Price for the said Unit based on the super/carpet area is Rs.54,89,611/- (Rupees Fifty four Lac eighty nine thousand six hundred eleven only) excluding GST as per detailed break-up given in Schedule-C of this Agreement. Total price includes pro-rata share in the common area, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the said Unit, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges etc.

3.4 It is further pertinent to mention that in Schedule-A of the Agreement, the super area and carpet area of the unit are clearly mentioned as 1477 sq. ft./137.22 sq. mt. and 974 sq. ft./90.49 sq. mt. respectively. Further, in Clause 1.2 and Schedule C & D of the Agreement, the total cost of the unit (not including taxes, statutory levies and other charges) is clearly mentioned.

3.5 The counsel of the respondent also submitted that the complainants opted for "Additional Down payment Plan/Additional Discount payment Plan" in lieu of consensus to make timely payment of installments and a discount of INR 6,23,892/- was given to the complainants. In case of failure to make timely payment of installments, the Company has the right to withdraw such rebate/discount/concession etc.

3.6 The complainants chose to finance their payment partially through a loan from SBI Bank for INR 45,70,000. Accordingly, the Tripartite Agreement was executed between the complainants, the Respondent and State Bank of India on 24.07.2018.

3.7 The counsel of the respondent also submitted that the complainants regularly defaulted in timely payments of the Unit. True copies of Intimation of Due Instalment Notices are annexed herewith as Annexure R-5 (Colly).

3.8 That the complainant, even today, owe the Respondent INR 2,73,003/- along with the statutory dues of INR 13,650.17 and interest dues (as on December 2024). The delays are outlined in the table below for the purpose of determining the tentative date of possession in accordance with Clause 7 of the Agreement. As per Clause 7.3, the Respondent is entitled to an extension of the possession date equivalent to the number of days for which the payments were delayed.

Stage	Due Date	Fully paid on	Delay
On Casting of Basement Floor Slab	21.04.2023	04.05.2023	13 days
On Casting of First Floor Slab	30.06.2023	15.07.2023	15 days
On Casting of Twelfth Floor Slab	10.10.2024	Not paid	120 days (as on 07.02.2025)
TOTAL DELAY			148 days Till 07.02.2025

The delays were presented in tabular form indicating delays of 13 and 15 days on casting of basement floor and first floor slab and 10 days delay on casting of twelfth floor slab. The total delay of 148 days was counted for the period after 21.04.2023 onwards i.e. after the agreed date of possession being December,2023.

3.9 It is clear that the complainants have made this delay and as per clause 7.3, the Respondent is entitled to extension of 148 days (and

counting). Further, the discount was given under the chosen payment plan in lieu of the condition that payments will be made in time. Since the same has not been done, the Respondent has the right to demand it back.

3.10 The counsel of the respondent also submitted that due to the unprecedented and unforeseeable calamity of COVID-19, the Respondent's work too was halted for a period of time and even after that could only resume at a snail's pace, given lack of availability of resources, personnel and labour at the time.

3.11 The respondent admitted that the date of possession of the Said Unit on or before December 2022, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure").

3.12 The respondent referred the decision of the Hon'ble State Consumer Disputes Redressal Commission, Chandigarh in its Judgment and Order dated 10.05.2023 passed in the cases of *Ramesh Kumar v. M/s Omaxe Chandigarh Extension Developers Private Limited and Ors.*, CC No. 9 of 2023 and *Ravinder Avasthi v. M/s Omaxe Chandigarh Extension Developers Private Limited and Ors.*, CC No. 10 of 2023, wherein the SCDRC Chandigarh granted the benefit of extension of 9 months in the date of possession to the present Respondent.

3.12.1 Similar relief has also been granted by the Hon'ble SCDRC Punjab in *Raman Kumar and Anr. v. Omaxe New Chandigarh Developers Pvt. Ltd.*, CC-24-2023. Even the Hon'ble National Consumer Disputes Redressal Commission in the case of *Kishore V. Patil v. M/s Marvel Zeta Developers Pvt. Ltd.*, Consumer Case No. 58 of 2022. D/d. 05.08.2024 has granted an extension of 16 months in the stipulated

date of possession on account of the handicaps and challenges posed by COVID-19.

3.13 The counsel of the respondent argued that the price of the unit has been agreed between the parties as per clause 1.2 of the agreement for sale and Complainants are estopped from claiming reduction in the agreed price in view of the Doctrine of Estoppel. Further, the complainants have entered into the agreements with the respondent of their own free will and consent, after satisfying themselves of the contents of such agreements and the specifications of the unit/project and other terms and conditions as per Recitals H, J, K and L of the Agreement. It was stated that price of the unit has been clearly stipulated and agreed by both parties in the Agreement for sale. It was further stated that the total price of the unit as per the agreement includes:

(1) Pro-rata share in the Common Areas; and

(2) Garage(s)/Closed parking(s) as provided in the Agreement.

(....)

1.9 the Allottee shall have the right to the said Unit as mentioned below:

(.....)

(i) The Allottee shall have exclusive ownership of the said Unit.

ii The Allottee shall also have undivided proportionate share in the Common Areas.

iii The computation of the price of the said Unit includes recovery of price of land, construction of [not only the said Unit but also] the Common Areas, internal development charges, external development charges, taxes, cost of providing electric wiring, electrical connectivity to the said Unit, lift, water line and plumbing, finishing with paint,, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges as per para 11 etc. and includes cost for providing all other facilities, amenities and specifications to be provided within the said Unit and the Project;

....

3.14 The provisions of Section 2(k) of the RERA Act define "carpet area" as the net usable floor area of an apartment, excluding the area covered

by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. On the other hand, Super Area/Super Built-Up Area is the total area of the property, including the built-up area, and common areas/utilities such as drainage, ventilators, entrance lobby, electrical shafts, fire shafts, plumbing shafts and service ledges on all units, common areas such as entrance lobby, lifts, common corridors and passages, staircases, munties, service areas including but not limited to machine room, security/fire control rooms, maintenance offices/stores etc. The super built-up area also includes the proportionate area of the amenities and facilities.

3.15 In the present case/project, the price of a unit was decided at the time of application/provisional allotment, depending upon various factors such as the cost involved in building the project and the unit, position of the real estate market etc. This is why a total price is reflected in the documents. Pricing of units vary largely depending on their location, which floor they are on, what view they have, how close they are to the lift or the parking, materials used, cost of construction, cost of labour, the state of the real estate market at the time it is being sold etc. Only after the full price is decided, it is broken down into a per sq. ft. figure in order to give the buyer an idea of how much he is spending. The total price comes first; the square footage division comes after. Therefore, it is the price of the total unit that is a determining factor, and in the present case, the price of the unit was indicated in the Application Form, and was finalized in Clause 1.2 of the Agreement for Sale between the parties. In both these places, it is the price of the entire unit that is stated. Once the price of the unit is agreed upon and accepted by the Complainants and they have signed

the Agreement, they cannot legally expect the same to be reduced by retrospective application of a square footage rate by alleging that the unit should be chargeable on carpet area basis and not on super area basis.

3.16 Further, it is stated by the respondent that an agreement for sale cannot state that the total price of the unit based on the super area (and can only state it on the basis of the carpet area) is erroneous and legally untenable. As submitted above, the total price of the unit remains fixed regardless of whether it is to be expressed in terms of super area or carpet area. Expressing/Mentioning the price on the basis of super area or carpet area is a moot point, as the same would not affect the total price of the unit in any way. This is especially true in the present circumstances where the total price was agreed to between the parties at the time of submission of Application Form as well as in the Allotment Letter/Agreement for Sale. There is no mandate in the RERA Act to charge only for the Carpet Area and also there is no bar to charge for the Super Area.

3.17 The present complaint deserves to be dismissed on the ground of non-joinder of necessary party. The complainant has failed to implead "*State Bank of India, through its Authorised Representative*" with whom the parties have entered into a Tripartite Agreement.

4. Complainants filed their 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 *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."

Further, Counsel of the complainant also rely on the decision of the Hon'ble Supreme Court of India in the case of Haryana Urban Development Authority Vs Mrs Raj Mehta, wherein it was held that if the builder is at fault in not delivering possession of the units/plots by the stipulated date, it cannot expect the allottee(s) to go on paying instalments to it.

The complainant's counsel also referred the decision of Hon'ble Supreme Court in the case of "Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna", 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.

5. 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.
- 5.1 The complaints were allotted flat bearing No. RNC/TOWER4/SECOND /204, having Super/Carpet Area of 1477/974 Sq. Ft. (137.22/90.49 Sq. Mtr.) type 3- BHK on 2nd floor in Tower No. 4 along with covered car parking, in the Project named "THE RESORT, PART A", having RERA Registration No. PBRERA-SAS80-PR0220 situated at Omaxe New Chandigarh. As per agreement dated 06.07.2018, the total price of the unit is Rs.54,89,611/- having super/carpet area of 1477/974 Sq feet. The date of possession is December, 2022. Till date no offer of legal possession is offered to the complaints by the promoter. Total payment of Rs.27,60,060/- is made till date out of this Rs.8,68,150/- was paid before 01.12.2022 i.e. due date of possession. As noted above valid possession was to be handed over to the complainant on or before

December, 2022 and it is apparent on record that there is more than 3 years delay.

5.2 The complaints have raised the issue that the complainants have been illegitimately charged for Super Area i.e. 1477 Sq.Ft./137.22 Sq.Mtr instead of Carpet Area measuring of 90.49 Sq. Mtr./974 Sq. Ft and also charged extra amount of Rs.18,69,500/- in excess for 503 Sq. Ft.

5.2.1 As per Section 2(k) of the RERA Act defines "carpet area" as the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

5.2.2 The Super area/Super Built-Up Area is the total area of the flat, including the built-up area, and common areas/utilities such as drainage, ventilators, entrance lobby, electrical shafts, fire shafts, plumbing shafts and service ledges on all units, common areas such as entrance lobby, lifts, common corridors and passages, staircases, service areas etc. The super built-up area also includes the proportionate area of the amenities and facilities. As per agreement dated 06.07.2018, total price of Unit is Rs.54,89,611/- excluding GST and there is no mention of sale price in terms Sq foot rate of unit in said agreement. Further, RERA Rules 4(3) states that:

"The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent."

5.2.3 Hence, RERA Rule state that it is mandatory to disclose the size of the apartment based on carpet area only. Respondent has not charged the

price on the basis of Sq Feet but price mentioned for the unit having defined super area/carpet area includes price of common facilities also. Total price of said unit includes the pro-rata/un-divided proportionate share in the common areas as well as the. garage/parking. Further, the agreed price also includes the recovery of land costs, construction of not only the unit but also the common areas, internal and external development charges, the cost of providing electric wiring, electrical connectivity, lift, water lines, plumbing, finishing (including paint, marble, tiles, doors, and windows), fire detection and firefighting equipment in the common areas, as well as all other amenities and specifications within the Unit and the Project. If the allottees were to only take possession of carpet area, it would be a flat without electricity, water, garbage disposal, plumbing, balcony, terrace, verandah, elevators etc., and would therefore not be live able, even legally. The price of a unit was decided at the time of application/provisional allotment, depending upon various factors such as the cost involved in building the project and the unit, position of the real estate market etc. This is why a total price is reflected in the documents. Therefore, the contention of complainant is not acceptable on this issue.

5.3 The plea of the respondents that the complainant has also make payment after due date as mentioned in para 3.8 above. The contention of the respondents is not acceptable as the delay period pertains to dates which falls after due date of possession i.e. 01.12.2022.

5.4 Regarding the further objection of the respondent that the present complaint is bad for non-joinder of the Bank from where the complainant has availed loan. It is the case of the complainant that

they are seeking possession along with interest for the period of delay and not refund of the amount deposited by them. In case they were seeking refund then the bank would have been necessary party and not in the case of seeking possession along with interest for the period of delay. It is held accordingly.

5.5 Further the argument raised by Counsel for the respondent that heavy discount of Rs.6,23,892/- was extended to the complainants. However, this argument has no force as it is the case of the complainants that they had opted for down payment plan under which they were entitled to this discount and the similar discount is given to all allottees of similar pedestal. The respondent offered the payment plans and the best was chosen by the complainants.

5.6 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 complainants. Thus, the complainants are 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.

5.7 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)"

5.8 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.

5.9 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.

5.10 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.

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

6.1 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 06.07.2018 after receiving the completion certificate from the competent authority.

- 6.2. 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 paid by the complainant w.e.f. 01.12.2022 the date agreed for handing over possession till date of this order minus four month on account of covid at the first instance and in case of payment made after possession date i.e. 01.12.2022, 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 till the date of receipt of this order.
- 6.3 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 paid by complainants from the date of this order till the date of delivery of legal valid possession of the flat bearing No. RNC/TOWER4/SECOND/204, type-3 BHK on 2nd floor in Tower-4 of the project namely "The Resort, Part-A" being developed by respondent at Omaxe, New Chandigarh, Punjab and submit the compliance report.
7. 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.

8. 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.
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