

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

Complaint No.0353 of 2024  
Date of Institution: 04.10.2024  
Dated of Decision:..16..02.2026

Shri Amit Gupta and Mrs Rekha Gupta,  
Both resident of House No. 214, Ward No. 6, Ashok Puri Mohalla,,  
Ahmedgarh, Sangrur, Punjab-148021.

....Complainants

Versus

M/s Omaxe Chandigarh Extension Developers Pvt Ltd, Omaxe House,  
7, Local Shopping Centre, Kalka, New Delhi- 110019

....Respondent

Present: 1. Shri Mohd. Sartaj Khan, Advocate, for the complainants  
2. Shri Arjun Sharma 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 04.10.2024 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.80,57,280/- 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. 1430 Sq. Ft./ 132.85 Sq. Mtr. and not for the Super area i.e. 2250 Sq. Ft./209.030 Sq. Mtr. as per layout/ disclosure made before RERA Authority.,

1.3 Respondent to be directed to refund the amount for excess area of 820 Sq. Ft. area amounting to of Rs.31,94,720/- 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. Gurinder Singh Matta who was allotted residential flat No.1501 vide application no. TRM/15/T1 dated 30.04.2017, having Carpet Area of 1430 Sq. Ft./132.85 Sq. Mtr. on Fifteenth floor in Tower No.6 in the Project named "The Royal Meridian", bearing Rera No. PBRERA-LDH45-PR0030 situated at Ludhiana, Punjab.

2.2 As per request for "assignment of allotment right" dated 15.10.2018, further an agreement dated 10.06.2019 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 for assignment of Allotment Right letter dated 15.10.2018 & documents presented, all rights and interest pertaining to the said unit, endorsed/assigned in favour of the assignees i.e. Mr. Amit Gupta & Mrs.

Rekha Gupta. Subsequent to the execution of the request letter, the complainants have also paid a total booking amount of Rs.8,21,525/- to the respondent company till 12.09.2017. Copy of request for "assignment of allotment right" dated 15.10.2018 is annexed as ANNEXURE C-1.

2.3 The Buyer's Agreement was executed on 10.06.2019 between the subsequent allottees and respondent Company. The said agreement was registered on 10.06.2019 with Sub Registrar. As per clause 1.2 of the Buyer's Agreement the total price of the unit was Rs.87,65,000/- and the respondent has charged for total Super Area i.e. 2250 Sq. Ft./209.03 Sq. mtr at the price of Rs.3,896/- per Sq. Ft. as per Buyer's Agreement and complainant has paid an amount of Rs.76,42,812/- plus GST of Rs.4,14,468/- till 03.09.2024. Copy of the Buyer's Agreement 10.06.2019 & Copy of Demand Letter dated 03.09.2024 is annexed as ANNEXURE C-2 & ANNEXURE C-3 respectively.

2.4 As per Clause 7.1 of the Buyer's Agreement dated 10.06.2019 the possession of the unit was to be delivered on April 2022 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.

2.5 The Respondent Company was to provide and charge for the Carpet area measuring of 1430 Sq. Ft./ 132.85 Sq. Mtr. in Tower No. 6 as per approved layout plan & disclosure made before RERA Authority while registration of the project but unfortunately the complainant has been illegitimately charged for Super Area i.e. 2250 Sq. Ft./209.03 Sq. Mtr and has charged extra amount in excess for 820 Sq. Ft. Further, from Schedule C-1 of the Buyers Agreement it can be found that the respondent has charged for Advance maintenance @ Rs 100/- per Sq.ft for Super Area of 2250 sq ft and has also charged for Electrical Equipment cost & firefighting

equipment cost @ Rs.50/- per Sq.Ft for total Super Area of 2250 Sq.Ft. which proves that the respondent has illegally charged for Super Area of 2250 Sq ft instead of Carpet Area of 1430 Sq. ft. Copy of RERA records are annexed as ANNEXURE C-4 (Colly).

2.6 The complainant also stated that the Respondent Company has not refunded the excess amount of Rs.31,94,720/- 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. 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. M/S Omaxe Chandigarh Extn Developers Pvt.Ltd." in Complaint /RERA GC No. 0383 of 2023 and held that the respondent has violated the statutory provisions of section 13(2) of the Act as the agreement for sale executed inter-parties is not in the prescribed as per Form 'Q' in the Punjab State Real Estate (Regulation and Development) Rules,2017.

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.

3. Notice of this complaint was issued to respondent. Shri Arjun Sharma, Advocate appeared on behalf of respondent on 05.12.2024 and submitted his Power of Attorney. Thereafter, reply dated 29.01.2025 was submitted by respondent on 30.01.2025 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 Regarding handing over possession as per clause 7.1 of the Agreement for sale dated 10.06.2019, vide which it was to be handed over in April 2022 it is submitted that it was clearly stated that unless there is delay due to *force majeure*. It is further stated that due to pandemic of Covid-19, the construction work had come to a standstill. The Government of India issued an advisory dated 13.05.2020 (**Annexure R/2**), by invoking the provision of '*Force Majeure*' under the provisions of 2016 Act followed by an order dated 28.10.2020 (**Annexure R/3**), issued by this Authority and vide its Clause 4(d) this Authority extended the time limit by 9 months from the original date, thus possession was to be delivered on January 2023 instead of April 2022.

3.2 Regarding charging for super area, it is submitted that the booking of flat was done by Shri Gurinder Singh Matta, who vide request form dated 15.10.2018 assigned his allotment right in favour of complainants. It is stated that while executing agreement for sale on 10.06.2019 (**Annexure R/4**) complainants were aware about the price, size/area and other things qua the flat and they executed agreement with their own free will and consent after satisfying themselves with the contents of agreement. Respondent relied upon and reproduced the recitals H, J, L and M of the said Agreement for sale, which are not being reproduced for the sake of brevity. Now complainants cannot raise any objection about the price, size/area of the flat.

3.3 Respondent relied upon Section 2(k) of the Act of 2016 which 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.

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 available in the project.

3.4 It is further stated that price of unit in question was decided at the time of booking of unit in question, depending upon various factors such as cost involved in building the said project, position of the real estate market, etc. Pricing of units largely depends on their location, which floor they are on, what view they have, how close they are to the lift or the parking, the state of the real estate market at the time it is being sold, etc. and in the present case, price of the flat was finalized in Clause 1.2 of the Agreement for Sale between the parties.

3.5 Respondent also stated that after executing the said contract, the complainants cannot challenge the same as being invalid/unlawful. Model Agreement lays down the way in which the Agreement must be executed between the parties and that the terms and conditions of the said Agreement should not be in contravention of 2016 Act and 2017 Punjab State Rules. Pro forma Agreement of Sale duly approved by RERA Punjab is Annexure R/5.

3.6 It is also submitted that carpet area merely includes the floor area of a residential unit. It does not include terraces, balconies, verandah area, service shafts and other common areas. However, complainants will be using these amenities/facilities. It is not possible to operate electricity, elevator and sewage services without services shafts and other common areas and also not possible to reside in the flat without these services. Respondent has

spent huge expenses, time and resources on these areas to make flat liveable. It is further submitted that if complainants were to take possession of only carpet area, it would be a flat without electricity, water, garbage disposal, plumbing, balcony, terrace, verandah, elevators etc., and there would be no sense of living. Even competent authority shall not even grant an Occupancy Certificate to such a flat. Thus, super area is a necessity and would be paid for this.

3.7 Respondent further referred Clause 33 of the Agreement whereby '*All or any disputes arising in relation to the terms and conditions of this Agreement, that shall be settled amicably by mutual discussion, failing which the same shall be settled through the adjudicating officer appointed under the Act or through process of Arbitration*'.

3.8 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.

**3.9** The respondent admitted that the date of possession of the Said Unit was on April, 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").

**3.10** 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.

3.11 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.

3.12 It is stated that in view of above averments it is established that complainants are not entitled for any reliefs sought by them in the complaint.

4. Complainants submitted rejoinder reiterating the contents of the complaint and controverting the contents of the reply submitted by respondent.

5. Counsel for respondent submitted written submissions on behalf of respondent and a copy thereof was handed over to counsel for complainants.

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

7. Before proceeding further, it is felt necessary to reproduce the interim order dated 22.01.2026 as under:

*Present: Mohd. Sartaj Khan, Advocate, for the complainant*

*Shri Arjun Sharma, Advocate for the respondent.*

*The matter was reserved for order on 28.11.2025. Today the matter was taken to get the confirmation from the complainant that the sale proceeds should be on carpet area or super area.*

*Ld Counsel appeared on behalf of the complainant stated that the price quoted by the respondent on the basis of Super area and not as per carpet area is not pressed upon.*

Therefore, keeping in view of the above, the matter is reserved for order.

Sd/-  
(Binod Kumar Singh)  
Member, RERA, Punjab"

7.1 Thus, relief sought by complainant mentioned at para 1.2 & 1.3 in the initial para has been resolved by the parties themselves and there is no need for adjudicating this relief and accordingly it is ordered.

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.

8.1 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.

9. Regarding the payment of interest on the amount of Rs.80,57,280/- paid by complainant to respondent towards the period of delay in handing over possession of the apartment allotted to complainant, as per clause 7.1 of the agreement 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 7.1 of the agreement. Even Counsel for respondent has not produced any Occupancy/Completion Certificate issued by the Competent Authority.

9.1 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, 2022. 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 period with effect from 01.04.2022 till the date of handing over legal possession of the apartment to complainant minus 4 months of *force majeure due to covid-19 as discussed in para 8.1 above*.

10. As per interim order dated 22.01.2026, the parties to the complaint have resolved the issue regarding carpet area vs super area, so no adjudication is required on this issue. Accordingly, it is disposed of.

11. 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:

11.1 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 10.06.2019 after receiving the completion certificate from the competent authority.

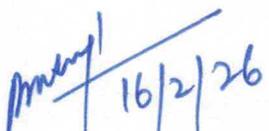
11.2 As a net result of the above discussion, this complaint is accordingly allowed and respondent is directed to pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant w.e.f. 10.04.2022 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. 10.04.2022 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 from the date of receipt of this order.

11.3 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. 80,57,280/- paid by complainants from the date of this order till the date of delivery of legal valid possession of the flat bearing No. 1501 on 15<sup>th</sup> floor in Tower-6 of the project namely "The Royal Meridian", Ludhiana, Punjab and submit the compliance report.

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

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

  
(Binod Kumar Singh)  
Member, RERA, Punjab