

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

Complaint No. RERA/ GC No.0381 of 2024

Date of filing: 05.11.2024

Date of decision: **19.05.2026**

1. Rahul Khanna
2. Nupur Khanna

Both residents of B-814, Jalvayu Tower, Sector 47, Noida, Gautam Buddha Nagar, Uttar Pradesh, Pin Code No.201303

...Complainants

Versus

Omaxe Limited, Shop No.19, First Floor, Omaxe, Celebration Mall, Sohna Road, Gurugram, Haryana

... Respondent

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

Present: Advocate Rujhan Dhawan, representative for the complainants  
Advocate Arjun Sharma, representative for respondent

**ORDER**

The main allegations in this complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") by the complainants against the respondent, relate to delay in handing over the possession of residential Flat allotted to the complainants in the project "OMAXE GREENS Phase-II" of respondent, situated at village Jharmari, Tehsil Derabassi, District SAS Nagar, Punjab. The total sale price of the flat was Rs.39,07,146/-. Till date the complainant had paid Rs.39,45,581/- towards the sale consideration. As per Clause 7.1 of the agreement dated 22.03.2019 the possession of the unit was to be delivered on

12<sup>th</sup> December 2020. However, the respondent without receiving the OC gave possession for fit-out on 23.10.2023 alongwith illegal demand of Rs.2,71,031/-. Complainants repeatedly requested the respondent to share the copy of Occupation Certificate on the basis of which it was offering the 'Fit-out possession. But till date no proof of Occupation Certificate being received was shared by the respondent. Hence, the present complaint.

2. Notice of the complaint was served on the respondent who filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainants reiterating the assertions and the claims made in the complaint.

3. In the reply filed on behalf of the respondent it was submitted that the flat in question was originally allotted to one Mrs. Meena Bansal which was subsequently transferred in the names of the present complainants at their joint request dated 02.03.2019. After receiving Occupation Certificate on 20.09.2024, the complainants were requested to take physical possession as per mandate of Section 19(1) of the 2016 Act but they did not come forward despite sending them multiple reminders for said purpose. It was then submitted that possession was to be delivered by December, 2020, as per clause 7.1 of the Agreement for Sale dated 22.03.2019, subject to force majeure events. However, before the delivery date of December 2020 due to outbreak of COVID-19 pandemic the Government has extended the period for all real estate projects by 6 months. Thus, it could not be said that there was any delay in handing over possession. Hence also denying rest of the averments of the complaint, a prayer was made for dismissal of the complaint.

4. While reiterating the contents of complaint, learned counsel for the complainants highlighted the main facts of the case. He pointed out that vide allotment letter dated 23.10.2019 the complainants were allotted a residential Flat No. OGDB/T20/Fourth/401 measuring 1610 Sq. Fts. in the project "OMAXE GREENS Phase-II". The total sale consideration of the flat was Rs.39,07,146/-. Till date the complainant had already paid an amount of Rs.39,45,581/-. As per Clause 7.1 of the agreement dated 22.03.2019 the possession of the unit was to be delivered on 12<sup>th</sup> December 2020. This stipulation had however been violated by the respondent. But they offered the fit-out possession to the complainant on 23.10.2023 without obtaining OC from the competent authority. Therefore, the respondent was liable to pay interest for delayed period on the amount paid by the complainants at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 for the period of delay till the delivery of possession.

5. On the other hand, learned counsel for respondent contended that under Section 18 of the Act an allottee was entitled for payment of interest only if the promoter was not able to give possession in accordance with the terms of the Agreement for sale entered into between the parties. In this case valid possession had already been given to the complainant on 08.12.2024 after obtaining OC and hence the complainants were not entitled to seek any interest on the delayed period under this provision. The possession as claimed by complainants was to be handed over by December, 2020. It was further the case of respondent that during the intervening period of March 2020 to Mid- 2022 due to Covid-19, the construction was at

snail's pace. The respondent could not meet the dead line and prayed for exemption from payment of interest for the period of delay.

6. Above submissions and contentions put forth by the parties have been considered and examined in the light of facts and circumstances emerging on the record. The undisputed facts of the complaint are that the complainants were allotted a residential Flat in the project "OMAXE GREENS Phase-II" of respondent. The complainants had already paid the entire sale consideration to the respondent and nothing was due against them. As per Clause 7.1 of the agreement the possession of the flat was to be delivered on 12<sup>th</sup> December 2020. It is pertinent to mention here that the unit in question was initially allotted to one Mrs. Meena Bansal which was subsequently transferred in the names of the present complainants at their joint request dated 02.03.2019 on the same terms and conditions. Therefore, for all other purposes, it is considered that the subsequent allottee had stepped into the shoes of the earlier allottee and is entitled for all the rights and facilities from the date of his or her becoming allottee. Admittedly, there is a delay in delivery of possession and for which claimants are entitled to claim interest thereon for the period it is being delayed. 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 should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed". Besides, Real Estate Regulatory Authority, Punjab vide its Circular dated 28.10.2020 had extended the completion date for all registered projects by six months

whose completion date was on or after 15<sup>th</sup> March, 2020. In view of above position a period of 6 months on account of *force majeure* has to be excluded from the period of delay in handing over possession to the complainants.

7. As already noticed, complainants fulfilled their obligations of making the requisite payment of the flat in question to the respondent. As no valid offer for possession had been made on behalf of the respondent/promoter by the stipulated date, therefore, no fault is attributable on the part of the complainants in their 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 complainants on or before December 2020 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 certainly defaulted in not completing the project of the case in hand by the stipulated date. The right to claim interest on the period of delayed possession is an indefeasible and unqualified right given to an allottee by the statute which cannot be taken away or declined as has been observed by Hon'ble Supreme Court in its landmark decision in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021**. Accordingly, the claimants are held entitled to interest for the period of delay.

8. 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

9. As an outcome of above discussion, the complaint is accordingly accepted and the respondent is directed to pay interest on the amount paid by the complainants at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 (today's highest MCLR rate plus 2%) w.e.f. 30.06.2021 i.e. due date of possession till 08.12.2024 i.e. date of possession. The respondent is also directed to provide the valid physical possession to the complainants with complete specifications as per the Buyer's Agreement, including car parking etc. The conveyance deed shall be executed thereafter in accordance with law within a time-frame prescribed.

10. The respondent is directed to make the above payment within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) 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 respondent shall be rendering itself 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**