

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

Complaint No. GC No. 0400 of 2024UR

Date of Institution: 18.11.2024

Dated of Decision: 06.03.2026

Jiwan Parkash Singla S/o Amarnath Singla
House no. 9-B, Friends Colony, Patiala, Punjab

....Complainant

Versus

1. The Estate Officer, Patiala Urban Planning Development Authority, Urban Estate, Phase II, Patiala, Punjab
2. M/s Omaxe Limited Through its Director/MD Omaxe House no. 7, Behind Kalkaji Post Office, Kalkaji LSC, New Delhi-110019

....Respondents

- Present:
1. Shri Deepinder Singla and Sh Mohit Uppal, Advocate and Sh J P Singla, in person for the complainant
 2. Sh Bhupinder Singh and Sh Balwinder Singh, Advocate for the respondent no. 1
 3. Sh Munish Gupta, Advocate for the respondent no.2

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 18.11.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

- 1.1 The respondents may kindly be directed to deliver possession of the allotted plot after making full development thereon and taking the completion certificate from the competent authority.
- 1.2 Pay interest on the amounts deposited by the complainant from the date of deposit till the handing over the of the possession.

- 1.3 Demand notices may kindly be stayed and set-aside in the interest of justice as already against the total cost of the land that is rupees 400 per sq. yards the complainant had paid rupees 5500 per sq. yards at the time of allotment and further paid rupees 500 per sq. yards in the year 2015. Now making further demand of rupees 560, 963 and 400 per sq. yard is totally illegal and unjust.
- 1.4** The respondents may be directed to give full account of the total land cost and money which they have recovered from the sale of residential and commercial plots plus land lying with them as per judgment of Hon'ble Punjab and Haryana High Court CWP No. 18259 of 2016 titled as Welfare Society of plot holders of PDA Omaxe Versus PDA and another the respondent may be directed to give full account of the land acquired and amounts received.
2. Brief facts of the complaint as submitted by complainant are summarized below: -
- 2.1 Plot No A-13, measuring 500 Sq yards was allotted to Mohan Kumar and further transferred to Ajay Kumar Alipuria from whom it was transferred to complainant on 25.08.2009 vide transfer no 2449. Copy of the allotment dated 22.01.2008 and transfer letter are annexed at Annexure C -1 and C-2 of the complaints.
- 2.2 As per clause 15 of allotment letter, possession of plot was to be given within 2 years of the issue of allotment letter. Complainant requested for possession but respondents have not delivered the same as the work is not complete thereon and the respondents have not obtained completion certificate till today.
- 2.3 Plot was allotted at the rate of Rupees 5500 per sq. yards whereas the land was acquired at the rate of rupees 200-250 per sq. yards. Now the respondents have made a further demand of rupees 500,

560, 963 and 400 per sq. yards as enhanced price whereas the Hon'ble Supreme Court of India has fixed the cost of acquired land at the rate of 400 per sq. yards plus other benefits available under the Act. The complainant has already paid rupees 5500 per sq. yards at the time of allotment and further deposited rupees 500 per sq. yards on 01.09.2015 and now the demand of rupees 560, 963 and 400 per sq. yards more is totally unjust illegal and arbitrary. The respondents have made this project a source of profit whereas the sole-motive of this authority is to provide house sites at the no profit no loss basis.

- 2.4 Legal notice (**C-3**) dated 27.09.2019 were given to the respondents but they did not give any reply to the said notice. It is worth mentioning that the respondents have sold commercial sites at the rate of rupees 1 lakh per sq. yards out of this acquired land and still having more than 100 arce land with them. Complainant does not intend to withdraw from the project so he is entitled for interest for every month of delay. The complainant filed earlier complaint number Adc No 14892019UR which was dismissed vide common order of Authority dated 07.04.2021. The complainant filed Appeal No. 51 of 2021 which was accepted and the matter was remitted back to the RERA Authority vide order dated 30.11.2021. The Authority again vide order dated 02.02.2022 dismissed the complaint for non-prosecution as well as on the ground of non-registration of the project with RERA. The complainant filed application for correction of the order and the same was allowed vide order dated 06.07.2022. It was cleared in that order that the complaint was dismissed on account of non-registration of the project only not on account of non-prosecution. The circular issued by RERA on 27.06.2022 vide

RERA/Pb/Legal/2022/6063 has made it clear that complaints against unregistered projects are very much maintainable (Annexure C-8).

2.5 Further, the CWP No. 14348 of 2016 filed by the welfare society of plot holder of PDA has already been disposed of on 02.08.2024. Now the plea of the respondent regarding the pendency of the CWP in High Court has become meaningless (Annexure C-9).

2.6 The complaints also referred the decision of the Hon'ble Punjab and Haryana High Court in CWP No. 4108 of 2016 titled as Ram Kishan and Another Versus State of Haryana and other, where held that no Govt. site or site through any govt. agency shall be allotted unless the same is completely litigation free and is fully developed and provided with all basic amenities. In the light of this judgment the authority of respondent no.1 has formulated a policy in the meeting dated 02.01.2017 and decided that if the possession is not handed over to the allottee within 18 months of the allotment the interest at the rate of 12% per annum will be provided to the allottee. The respondents are charging rate of interest and penal rate of interest at much higher rates than permissible in the RERA Act, 2016 whereas the Hon'ble Punjab and Haryana High Court has held in CWP No. 25115 of 2016 titled as Gurpreet Singh Bhullar and others versus State of Punjab and Others that authorities cannot charge interest or penalty before handing over the possession.

2.7 The complainant stated that the respondents i.e Estate Officer, Patiala Urban Planning Development Authority, Patiala, as respondent no. 1 and M/s Omaxe Limited as respondent no.2, have played a fraud with the complainant as the respondent no.1 was from the very beginning not satisfied with the quality of work and time schedule maintained by the respondent no.2. The notice of default issued by the respondent no.1 upon respondent no.2 on dated

09.12.2010 is a clear-cut proof that from 09.06.2008 to 09.12.2010 the respondent no.1 has issued about 25 letters to respondent no.2 regarding the poor quality of work and non-sticking the time schedule. If respondent no.1 was itself not satisfied with the quality of work of respondent no. 2 then they should not allot the residential as well as commercial plots to the allottees. Notice of termination dated 20.06.2011 issued by PDA to Omaxe says that only 29% of the overall work has been completed. The complainant has already waited long period of about 15 years and cannot be compelled for an indefinite period hence the respondents have themselves liable for paying interest on the deposited amount as per section 18 of the RERA Act, 2016 for every month of delay.

3. Notice of the complaint was served on the respondents who has filed a detailed reply in the matter.
4. Upon notice Shri Bhupinder Singh and Sh Balwinder Singh, Advocates appeared for the respondent no. 2 and submitted the reply dated 03.03.2025 on 06.03.2025 to the following effect:
 - 4.1 A joint development Agreement dated 16.11.2006 was executed between the respondent-1(PDA) and respondent-2(OMAXE Ltd). As per agreement, respondent-1 is solely responsible for the fulfillment of the employment criteria. The delay in handing over the possession to the allottees has been on account of the failure of Respondent No.2 to fulfill obligations and adhere to the time-schedules prescribed in the said agreement for the execution/implementation of development works.
 - 4.2 As per above said agreement, Respondent No.2 was under obligation to ensure the provision of water, electricity, sewerage, storm water, solid waste management and facilities/amenities to the said project,

within 24 months of the effective date of this agreement. It was the sole responsibility of respondent no. 2 to complete the project within 48 months from the date of commencement. Vide dated 18.07.2007, Respondent no. 2 has assured to complete the development work of residential pocket within a period of 2 years from allotment of plot and in case of delayed development beyond 2 years, then all liabilities and responsibilities arising therefrom shall be borne by respondent no. 2. Based on this assurance, respondent no. 1 conducted the draw of lots for the allotment of 1572 residential plots in November 2007.

4.3 Further, as per above said agreement respondent no.2 was responsible for development and also claims/liabilities and compensation towards defects/delay. As per article 7.3 of the agreement, respondent no. 2 shall also be liable to the plot owners for all acts and omission on its part.

4.4 The respondent no. 1 submitted that the allotment has been made under the provisions of the Punjab Regional and Town Planning and Development Act,1995 and the complainant has failed to avail the alternatives remedy of appeal available to him under ibid Act, hence the present Complaint deserves to be dismissed on this ground.

4.5 As per Section 174 of the Punjab Regional and Town Planning and Development Act, 1995, order passed by the State Government or the Competent Authority are final and not to be question in any suit or other legal proceedings. In view of this position, the RERA Authority lacks jurisdiction to entertain and adjudicate upon the present complaint.

4.6 Then respondent no. 1 also submitted that there is an arbitration clause in the letter of allotment to settle dispute or difference arising out of allotment of the site in question.

4.7 Respondent No. 1 also mentioned the provisions of Section 3 of Act and stated that provisions of the RERA Act & Rules have been made applicable prospectively i.e. w.e.f. 01.05.2016 and 01.05.2017 not retrospectively. He also discussed the definition of 'ongoing project'. He also submitted that Patiala Urban Planning and Development Authority, (PDA) has applied for registration of project vide application dated 29.09.2017 which was rejected on the ground that time frame for completion of project has not been given in the application. The respondent argued that the complaint against the projects which are not registered with the authority under RERA are not within the ambit of Real Estate (Regulation and Development) Act, 2016 as held by the Hon'ble Supreme Court in M/s. Newtech Promoters and developers Pvt Ltd Vs State of UP & Ors. Etc, Civil Appeal no. 6745-6749 of 2021 dated 11.10.2021. However, the respondent also argued that circular issued by the RERA on 27.06.2022 is not in consonance with the judgement delivered by the Hon'ble Court on the jurisdiction of RERA.

4.8 Respondent no.1 further submitted that the PDA issued a notice of termination upon OMAXE Ltd for his failure to execute the project and breach of terms and conditions of the Joint Development Agreement on 26.06.2011. It is also submitted by the respondent no.1 that land reference filed by the land-owners of the land acquired for the project has been finally decided by the Hon'ble Supreme Court on 24.10.2018. The inter-se dispute between the PDA and OMAXE was referred to the Arbitral Tribunal and the award given by the Tribunal is under consideration of the Punjab Government for taking final decision. Reply of the legal notice dated 27.02.2019 of complainant has also been given on 15.01.2020 and in reply it was clearly

mentioned that the complainant can take over the possession of the plot after making balance payment.

- 4.9 Further, respondent submitted that the allotment of plot was made under Punjab Regional and Town Planning and Development Act, 1995 by PDA, provisions of the Punjab Apartment and Property Regulation Act, 1995 (PAPRA) is not applicable in this case. As per condition no.3 of allotment letter, the allotment was made under the provisions of the Punjab Regional and Town Planning and Development Act, 1995. The respondent no.1 being 'Statutory Authority' is exempted from the applicability of the entire provisions of PAPRA regarding obtaining of Completion/ Occupation Certificate under the provision of PAPRA. It is submitted that as per condition no. 15 of the allotment letter, the possession of the plot is to be offered with complete infrastructure i.e. completion of development works (Roads, Electricity, Water Supply, Sewage) and possession was offered based on the report of the completion of development works. The respondent also stated that most of the allottees of the residential area of this project has already taken over the possession of plot and also raised construction. Respondent also enclosed list of plots of which possession has been taken (Annexure -R/3) and copies of occupation certificate obtained by the nearby plot-holders is also annexed as Annexure -R/4. Further, respondent no. 1 also submitted Financial Progress report up to July, 2011 submitted by M/s Redecon (India) Pvt Ltd (Annexure-R/5), which reveal that the development works in the residential area of the project in question are almost complete.
- 4.10 Regarding complainant complaint on the issue of price of plot, demand for additional price was raised due the enhancement made

by the Hon'ble Supreme Court of India and there are no provisions in RERA Act, 2016 to interfere on the issue of the price of the plot.

5. Upon notice Shri Munish Gupta, Advocate appeared for the respondent no. 2 and submitted his reply dated 28.05.2025 on 29.05.2025 to the following effect:

5.1 The respondent no. 2 i.e. M/s Omaxe Ltd had stated that property in question is primarily of Patiala Urban Planning and Development Authority (PDA). Respondent no.2 was granted development right of said project but the ownership rights of the project remain with the PDA. Respondent has no rights in respect of allotment, cancellation etc of the plot. Perusal of allotment letter clears that all right qua the project is with PDA and its Estate Officer. Further, the statutory appeals etc against the order passed by the Estate Officer, are also governed by the Punjab Regional and Town Planning and Development Act, 1995.

5.2 The development of the project in question came to a standstill due to reason of writ petition in Hon'ble High Court challenging Joint Development Agreement, termination notice by PDA and non-grant of permission by PDA to M/s Omaxe Ltd. The respondent no.2 also raised the facts that the complainant had already filed similar complaint before the authority which was dismissed by the Authority. The respondent no.2 has also submitted that he is only a developer in the project had certain duties towards the project but as far as collection of amounts, taking decision regarding development of the project and payment/non-payment by allottees and any delay etc., such decision falls within the purview of right of PDA and has nothing to do with the respondent no.2. Further, agreement with PDA would itself show that the amount is to be deposited with PDA.

- 5.3 In his submission, the respondent no. 2 also addresses the issues raised by the complainant such as applicability of RERA Act, 2016 in case of unregistered project, resolution of dispute by Arbitration, allotment of plot to be governed by Punjab Regional and Town Planning and Development Act, 1995, delay in filing of complaint by the complainant.
6. The complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. It is also alleged that the replies filed by respondents No.1 and 2 are vague, misleading, and devoid of merit, attempting to evade liability by citing irrelevant legal provisions, pending litigations, and inter-se disputes. Respondent No. 1 has wrongly contended that complaints against unregistered projects are not maintainable, despite clear legal precedence to the contrary. Furthermore, both respondents have failed to fulfill their contractual obligations, delaying possession for over many years. The respondents' reliance on arbitration clauses and other statutes does not override the jurisdiction of this Hon'ble Authority under the RERA Act, 2016. Additionally, the plea of pending court cases has no bearing on the complainant's rightful claim, as neither of them prevented project completion beyond 2013. The respondents are jointly and severally liable, and their attempt to shift blame onto each other is unjustified. Given the prolonged delay and financial burden imposed on, the complaint deserves to be allowed under Section 18 of the RERA Act, 2016, ensuring justice and due relief to the complainant.
7. Vide proceeding dated 04.12.2025, the matter was reserved for order. During preparation of the detailed order, it was observed that the payment details was not submitted by either of the party.

Therefore, vide zimmni order dated 10.02.2026, both parties i.e. complainants and respondent no.1 are directed to submit the payment details duly certified by the Chartered Accountant on or before the next date of hearing i/e/ 27.02.2026 at 11.30 A.M.

7.1 On 27.02.2026, Sh Jiwan Parkash Singla, in person for the complainant, Sh Bhupinder Singh, Advocate for the respondent no. 1 and Sh Ankit Kumar, Proxy Advocate for Sh Munish Gupta, Advocate for the respondent no.2 has attended the proceeding. Neither Complainant nor Respondents has provided the details of payment duly certified by Chartered Accountant. However, Sh Jiwan Parkash Singla, complainant has furnished ledger account dated 28.02.2026 which was downloaded from the official website of the respondent no.1 but the same was not verified by the respondent no. 1.

7.1.1 While preparing the final order, on 06.03.2026, Sh Jiwan Parkash Singla, complainant in person and counsel of the respondent no.1 has furnished property ledger account dated 05.03.2026 which was downloaded from the official website of the respondent no.1 and signed by Section Officer, PDA, Patiala. As per property ledger statement, amounting Rs.23,10,803/- has been paid before transfer to the complainant and remaining amount Rs.10,28,803/- was paid by the complainant on respective dates i.e. Rs.2,68,659/- on 01.09.2025, Rs.18,300/- on 21.12.2015, Rs.2,79,905/- on 05.06.2017 and Rs.4,62,000/- on 05.03.2026. Scan copy of property ledger statement dated 05.03.2026 is reproduced below:

J. K. Singh vs PDA & Max G

3/5/26, 2:41 PM

Property Ledger

SCHEME NAME : PDA-Cross City (Residential) PH-1
 PHASE : I, BLOCK : A, PLOT No. : 13
 Current Owner Name :- Jwan Parkash Singh S/O Sh. Amernath Singh

Property Details :

Sale Type	: Draw	Usage Type	: Residential
Property Type	: Plot	Area (Sq. Yard)	: 500
Allotment No. & Date	: 1312 & 22-Jan-2008	Lease/CD Reg. Date	: -NA-
Possession Date	: Deemed to be possessed	Construction Completion Date	: -NA-
Checked By	: -NA-	Verified By	: -NA-
Sale Price (LumpSum)	: 2,750,000.00	Sale Amount	: 2,750,000.00
Premium Category Type	: -NA-	Premium Category % & Amt	: 0% & 0.00
Auction Date	: -NA-	LCI No. & Date	: -NA-
Is Under Litigation	: No	Litigation Completion Date	: -NA-
Total Sale Amount	: 2,750,000.00	NDC Dispatch No.	:
NDC Dispatch Date	:	Court Case	: No

Receipt Detail							View Receipt Detail		
#	Date	Book No.	Receipt No.	Payment Receipt No.	Mode	Payment Detail	Total Amount	Head Type	Sub Total
1.	07-Sep-2007	-NA-	-NA-	-NA-	Demand Draft	DD No. 74189	270000	Earnest Money Deposit	270000
2.	05-Feb-2008	PDA/2008/8	PDA/2008/400	-NA-	Demand Draft	DD No. 559002	412500	Allotment Money(Capital Receipt)	412500
3.	16-May-2008	-NA-	PDA/2008/3049	-NA-	Demand Draft	DD No. 559250	412500	Instalment	412500
4.	28-Jul-2008	PDA/2008/70	PDA/2008/3495	-NA-	Demand Draft	DD No. 482594	412500	Instalment	412500
5.	24-Oct-2008	PDA/2008/83	PDA/2008/4143	-NA-	Demand Draft	DD No. 50995	69750	Process Fee	69750
6.	27-Oct-2008	PDA/2008/84	PDA/2008/4180	-NA-	Demand Draft	DD No. 281119	275000	Instalment	275000
7.	06-Nov-2008	PDA/2008/85	PDA/2008/4245	-NA-	Demand Draft	DD No. 251149	5693	Partial Interest Receipt	5693
8.	06-Feb-2009	PDA/2009/99	PDA/2009/4939	-NA-	Demand Draft	DD No. 451385	275000	Instalment	275000
9.	04-Aug-2009	PDA/2009/127	PDA/2009/9319	-NA-	Demand Draft	DD No. 24707	69750	Process Fee	69750
10.	10-Aug-2009	PDA/2009/128	PDA/2009/9364	-NA-	Demand Draft	DD No. 85749	100000	Instalment	100000
11.	10-Aug-2009	PDA/2009/128	PDA/2009/9371	-NA-	Demand Draft	DD No. 648098	3150	Partial Interest Receipt	3150
12.	01-Sep-2015	-NA-	-NA-	658	Demand Draft	DD No. 135159	29659	Compensation	29659
13.	21-Dec-2015	-NA-	-NA-	725	Demand Draft	DD No. 952818	18300	Compensation	18300
14.	05-Jun-2017	-NA-	-NA-	1082	Demand Draft	DD No. 483757	279005	Compensation	279005
15.	05-Mar-2026	-NA-	-NA-	3374	Demand Draft	DD No. 655746	482000	Instalment	482000
Total Amount									3339867

fair
 Section Officer
 PDA, Patiala.

*True copy
 Adv*

7.2 The 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.

7.3 Sh Jiwan Parkash Singla had repurchased the Plot No A-13, measuring 500 Sq yards which was earlier allotted to Sh Mohan Kumar and further transferred to Sh Ajay Kumar Alipuria from whom it was transferred to complainant on 25.08.2009 vide transfer no 2449. The allotment letter dated 22.01.2008 issued to Sh Mohan Kumar was signed by both respondents. As per clause of allotment letter dated 22.01.2008, possession of plot will be given within two years from the date of allotment i.e by 22.01.2010. The respondent no.1 argued that the 1st clause of allotment letter issued on 22.01.2008 provided that it is understood and agreed by the allottee that the plot is being offered on "as is where is basis", therefore, as per the practice prevalent at that time, possession was to be taken in whatever condition it is existing. The respondents no.1 vide letter no.689 dated 09.03.2011 submitted that it was informed to the complainant that the works of roads, sewerage and water has been completed and works related to electricity is pending however temporary connection will be provided by the Omaxe (Developer). Further, it was also informed that if the complainant is interested in taking the possession of plot, then necessary action will be taken. Para 14 of the allotment letter stated that allottee shall be deemed to have taken over the possession of the said Plot on expiry of 30 days of offer of possession for the purpose of maintenance charges or any other taxes, therefore, the possession per se was not invalid per se as it was offered as per the terms and conditions agreed between the parties and RERD Act, 2016 was not applicable on the said day. The allottee/purchaser and promoter/seller are to be held liable for their rights, duty and obligations as agreed independently at that point of time.

7.4 The complainant argued that he had deposited a huge amount in the project on the promise of timely possession, yet despite repeated assurances, no possession has been made. He alleged that the respondents failed to perform their contractual and statutory obligations. He further submitted that the termination of the development agreement in 2011 and the non-registration of the project with RERA only reflect the failure of both respondents. Already there is a delay of about 14 years in handing over of the possession. Possession was due in January 2010, however the respondent developer is not in a position to hand over the possession in near future because a lot of work is pending till today. According to him, the prolonged delay constitutes deficiency in service and unfair trade practice. He, therefore, prayed for possession of plot and interest on deposited amount after due date of possession.

7.5 Respondents also at the same time cannot take benefit of the fact raising an argument in this regard that the project was since not registered it did not come within the purview of RERA. The Respondents are allowing possession of the plots after the enactment of RERA Act. No doubt that registration of an ongoing project that has not been completed has been made mandatory as is there in the case of respondents but the fact that it is unregistered does not put it out of the purview of RERA as it can be deduced that the powers vested in RERA are unfettered pertaining to all real estate transactions. They also cannot take recourse to this argument that the respondents applied for registration under RERA Act but their case was rejected by the Authority itself. Although it is a matter of discussion here as to how and under what circumstances their application for registration was rejected? yet as it came to be revealed during arguments that registration application perhaps was rejected by the Authority since no timeline for the completion of project was given by the respondents/

promoters. Had this been the case, the promoters should have made up the deficiency pointed out that was made a ground for rejection or otherwise they should have even challenged the rejection order before the Appellate Tribunal.

- 7.6 Regarding rate of acquisition of land; enhancement by the Hon'ble Supreme Court of India, and demand being raised for additional price, the price being charged is as per terms and conditions of allotment which the complainants had accepted and there is no provision in the Act of 2016 to interfere in the price for allotment of plot or apartment. The plot was allotted to the allottees after developing the land with huge expenses. The issue of enhancement of price had already been declined by this Authority in GC No.1489 of 2019UR titled "*Hukam Chand vs Estate Officer, PDA and another*" and this part of the order had been confirmed by the Hon'ble RERA Tribunal in Appeal No. 50 and 51 of 2021 vide order dated 30.11.2021.
- 7.7 Regarding the non-availability of the Completion Certificate (CC) is concerned, it is evident from the submissions that the respondent does not have a CC for this project. The reliance placed by the respondents on Section 44 of the PAPR Act 1995, claiming exemption from requirement of Completion Certificate cannot be accepted as it is a requirement under the RERA Act of 2016 which is a Central legislation and has to prevail in case of conflict with a State law.
- 7.8 Section 31 of the Act of 2016 further provides for the filing of a complaint by an aggrieved person. Sections 88 and 89 of the Act of 2016 provide that its provisions would be in addition to those of any other law in force at the time and also, that the Act of 2016 would have overridden effect in case of inconsistency with any other law. The Act of 2016 is a Central legislation and its working cannot be restricted by any State law. Thus, the contention that Section 174 of the Punjab

Regional and Town Planning and Development Act, 1995 ousted the jurisdiction of this Authority cannot be sustained. Similarly, the Act of 2016 provides an alternative remedy to an aggrieved allottee; and this remedy cannot be denied on the ground that the remedy available in the pre-RERA days should have been followed. It is evident that none of the legal issues raised by the respondents have any merit to the extent that this authority doesn't have jurisdiction over the issue raised. It is a matter of judicial consistency narrated in various orders that mere presence of any arbitration clause does not preclude the jurisdiction of this authority. The Hon'ble Supreme Court in the matter of '*Emaar MGF Land Ltd. Vs. Aftab Singh*' (Civil Appeals No.23512-23513 of 2017) held that mere presence of an arbitration class does not preclude the jurisdiction of this Authority.

- 7.9 Above submission and contentions put forth by the parties have been considered and examined in the light of the facts and circumstances emerging on the record. Upon doing so, this bench of the Authority finds itself more or less in agreement with case put forth on behalf of complaint. Before embarking upon the discussion and examining the respective submissions made on behalf of the parties, it is worth mentioning that RERD Act is a beneficial legislation and the provisions made in Section 18 of the Act are one of such important beneficial section towards the aggrieved person. Besides, because of its provisions being remedial in nature, the Act has been held to be a 'retroactive statue' to make sure that the sale of a real estate project is done in an efficient and transparent manner about protection of consumer's interest by the Hon'ble Apex Court in its landmark decision in M/s Newtech Promoter and Developers Pvt Ltd Vs State of U.P and others in civil appeals no.6745-6749 of 2021. A retroactive law is a 'Legislative Act that look backward or contemplates the past affecting

acts of facts that existed before the Act came into effect. The provision of Section 18 of the Act 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) 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:

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) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force. Transfer of title. Return of amount and compensation.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

7.10 In view of above, if the promoter fails to complete or is unable to give the possession of plot in accordance with the terms of agreement for sale/allotment letter as the case may be, duly completed by the date specified therein. As such there is either of the two conditions that is to be taken note of while dealing with question of their compliance and fulfilment. Firstly, where promotor fails to complete the project,

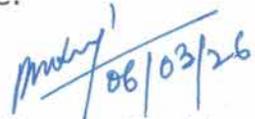
secondly where promoter is unable to give possession of plot. Non-compliance of both above said conditions should be in accordance with the terms of the agreement for sale. In the present case, it is observed that the promoter not only failed to complete the project but also was unable to give the possession in accordance with the terms of the allotment letter. It is evident that the stipulated date for possession was 22.01.2010, yet the complainant has not been given possession to date. The delay stands admitted and cannot be justified. The plea that RERA provisions are inapplicable is not tenable because the cause of action continues until possession is delivered or refund is made. Hence, the jurisdiction of this Authority is attracted. The dispute between promoters as *inter se parties* i.e. PDA and Omaxe Ltd. cannot prejudice the rights of the complainant, who is a *bona fide* allottee. Both PDA, being the land-owning agency, and Omaxe Ltd., being the developer under the JDA, are responsible to the allottee. The plea of *force majeure* and pendency of litigation does not absolve the respondents of their liability, particularly when the project stands unregistered and development work has remained incomplete for more than a decade.

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

8.1 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 amounting Rs.23,10,803/- with effect from date of transfer of allotment letter in favour of the complainant i.e. 25.08.2009 and thereafter date of respective payments as mentioned in para 7.1.1 above made by the complainant to the respondents after date of transfer of allotment letter towards total sale consideration till date of order in the first instance within ninety days from the date of receipt of this order

and submit a compliance report to this Authority about releasing the interest amount as directed. Both the promoters i.e. Estate Officer, Patiala Urban Planning & Development Authority PDA and M/s. Omaxe Ltd. are held to be jointly & severally liable for payment declared under this order irrespective of their inter-se party agreement/MOU/share in the project.

- 8.2 Further, respondent is also directed to pay interest on amounting Rs.33,39,667/- paid by the complainant, @10.80% from date of issue of order to actual date of possession or two months after getting the completion certificate by competent authority and offering possession whichever is earlier.
9. 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.
10. File be consigned to the record room after due compliance.


(Binod Kumar Singh)
Member, RERA, Punjab