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

Complaint No. RERA/ GC No.0422 of 2024
Date of filing: 03.12.2024
Date of decision: **18.05.2026**

1. Neelam Arora;
2. Akanksha Arora;
   Both residents of 806 PEC Campus, Sector 12, Chandigarh-160012

...Complainants

Versus

M/s Omaxe New Chandigarh Developers Pvt. Ltd. through its Directors, Regd. Office: - 10, Local Shopping Complex, Kalkaji, New Delhi-110019

... Respondent

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

Present: Advocate M-Shahnawaz Khan, representative for the complainants
Advocate Ashim Aggarwal, 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 complainants relate to delay in handing over the possession of residential unit allotted to the complainant in the project "The Lake" of respondents, situated at Omaxe New Chandigarh. The total sale price of the unit was Rs.74,75,623/-. As per clause 7.1 of the Buyers Agreement dated 26.12.2022, the possession of the said unit was to be delivered on or before 31.07.2023 which had been delayed indefinitely. However, the respondent company handed over the possession of the said unit on 11.08.2024 to the complainants even without obtaining OC/CC. So

much so, the complainant was charged for the super area while no sale could have been made on the basis of super area. As per the provisions of RERA and model agreement the sale could be made only of the carpet area. But the respondent has even increased the super area. Accordingly, the main relief sought for is to issue direction to respondent to pay interest for the delayed possession as per RERA Rules on the total amount paid by the complainants till the date of offer of actual legal possession after obtaining OC/CC from the competent authority.

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

3. In the reply filed on behalf of the respondent certain legal issues were raised on the grounds of maintainability of the complaint and concealment of facts. The factum of booking of the unit in question by the complainants in the project of the case in hand has been admitted and it was submitted that while the anticipated date for possession was 31.07.2023, any delays were directly attributable to unforeseen circumstances beyond the respondent's control, including delays in obtaining essential regulatory approvals and, most significantly, force majeure conditions caused by the COVID-19 pandemic. It was then submitted that the respondent had always acted in good faith and had honoured all its contractual commitments and obligations. It had fully adhered to the model Buyer's Agreement as prescribed under the RERD Act. The complainant's assertion that they were charged for a super area instead of a carpet area was based on a misunderstanding of the terms laid out in the Buyer's agreement. The charges for the super area were clearly defined and agreed upon in

Clause 1.2 of the Buyer's Agreement dated 26.12.2022. The respondent had not violated any provisions of the RERD Act. Hence also denying rest of the averments of the complaint, a prayer was made for dismissal of the complaint.

4. While putting forth the arguments on behalf of complainant her learned counsel emphasized that although the agreement/ allotment letter was executed on 20.12.2022 and the date of possession mentioned therein as 31.07.2023 was actually forced on her taking advantage of her weaker position as an allottee despite the fact that a major amount of the total sale consideration was received by respondent before execution of the agreement to sell in violation of the provisions of Section 13 of the Act. Respondent being in dominant position having received major amount of sale consideration intentionally delayed execution of agreement to sell and then mentioning the date of possession unilaterally in order to evade from his statutory liability under Section 18 of the Act. In this manner in order to do justice a presumption has to be raised with regard to date of allotment/ agreement to sell as well as promised date of delivery of possession that have been forced on her as against the actual shown dates mentioned in the agreement. It was also further contended that the provision of payment of simple interest on the delayed possession was also unreasonable and was forced upon complainant taking undue advantage of her weaker position. So much so, the complainant was charged for the super area while no sale could have been made on the basis of super area. As per the provisions of RERA and model agreement the sale could be made only of the carpet area. But the respondent has even increased the super area.

5. While opposing the above submissions, it was argued on behalf of respondent that first of all the present complaint was not maintainable at all as she has been guilty of suppression and concealment of certain true and material facts especially with regard to the settlement with the respondent that has been arrived at between them. It was also contended that not only certain material facts have been suppressed but she has raised contradictory pleas also as was clear from the notice dated 27.04.2024 served by her on the respondent through her counsel wherein she has prayed for the relief admitting therein the last payment made by her on 19.02.2019. Infact respondent had been sending her letters on numerous occasions asking her to come forward to execute registration of agreement for sale but she herself failed to come forward to get the agreement to sell executed. Moreover, it was only the complainant no.1 who had submitted an application alongwith the booking amount of Rs.3 lacs vide a cheque dated 11.11.2018 opting for lumpsum payment plan in which 95% of the total cost was to be cleared within 90 days of the booking and remaining 5% of the total cost plus IFMS was to be paid on intimation of possession. In this manner she i.e. complainant no.1 herself opted out of her own free volition with her open eyes. She was therefore bound by the said terms. It was complainant no.1 herself who did not come forward in response to various letters addressed to her asking her for the execution of sale agreement. Even the increase in area by 35 Sq. Ft. was strictly as per terms and conditions of the agreement dated 26.12.2022. Otherwise also the agreement to sell was entered into between the parties out of their free will with their eyes open. The principle of '***Caveat Emptor***' and '***Pacta Sunt***

***Servanda'*** applies to the present case and the complainant did not deserve any relief on that account.

6. Above submissions and contentions have been considered in the light of facts and circumstances emerging from the record placed on file. Upon doing so, this Authority fails to find itself more or less in agreement with the contentions that have been put forth on behalf of the respondent especially in view of the fact that in its written statement/ reply filed the promoter/ builder company itself admitted that it was only complainant no.1 who had submitted an application form alongwith booking amount of Rs.3 lacs vide cheque dated 11.11.2018 and had opted for the lumpsum payment plan as per which 95% of the total cost was to be cleared within 90 days of the booking. As such the contention raised on behalf of complainant that infact the date of delivery of possession i.e. 31.07.2023 in the agreement to sell dated 20.12.2022 was not only an unreasonable and unilateral one but was apparently a forced one upon them, they being in a weaker position as allottees, stands substantiated. Moreover, there seems to be no reason as to why the complainant would not come forward in order to get the agreement for sale executed specially when more than 95% of the total sale consideration was deposited by her. Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. (now known as M/s Hicon Infrastructure) Vs. Trevor D'Lima and Ors. (Civil Appeal No(s) 3533-3534 of 2017)** observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them along with compensation. When there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In

the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."

When the facts of the present case are examined in the light of above observation of the Hon'ble Supreme Court a presumption is liable to be drawn with regard to the date of delivery of possession mentioned in the agreement which is found to be not only unreasonable, unjustified i.e. rather apparently being forced upon the complainants taking undue advantage they being allottees in a weaker position vis-a-vis respondent/ promoter. It is for this purpose RERA Act has been enacted which being a retroactive Act seeks to provide a remedy for the wrongs done in the past even as has been observed again by the Hon'ble Supreme Court in ***M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021***. Otherwise also RERA Act is a beneficial legislation. And, the provisions made in Section 18 of the Act are most beneficial of all. One more thing is revealed from the perusal of the record that the apartment was allotted and booked by the complainant in the year 2018 as is shown by the letter dated 14.12.2018 addressed to her by the respondent itself admitting that allotment of the unit was done before that. The said letter although asking complainant to come forward to execute the agreement speaks as follows;

> "This bears reference to the Allotment of above said unit, we wish to inform you that as per the Real Estate (Regulation and Development) Act, 2016 your Agreement for Sale needs to be registered."

7. As such having discussed all the things above the period of three years for the delivery of possession is to be counted from the

said letter dated 14.12.2018 which was addressed to complainants by the respondent company itself admitting the allotment of the unit having been done already. In this manner the date of supposed delivery of possession of the unit booked comes out to be 14.12.2021 going by the observations made by the Hon'ble Supreme Court in its landmark judgment in ***Fortune Infrastructure & Ors. (now known as M/s Hicon Infrastructure Vs Trevor D'Lima and Ors. (Supra)*** as against what has been mentioned in the agreement to sell i.e. 31.07.2023. Complainants are therefore found to be entitled to claim the interest u/S 18 of the Act for the delayed period of possession i.e. 14.12.2021 to 11.08.2024 when the possession was delivered to complainant at her own request made to respondent through her counsel vide letter dated 27.04.2024 (Annexure C-7). As the possession of the unit booked was delivered at the insistence of complainant herself, she does not deserve to be given interest on the amount paid beyond 11.08.2024 even if the possession has been delivered not in duly completed manner in accordance with the terms and conditions of the agreement without there being OC obtained by the promoter. Rather in such a situation complainant could claim only the compensation in case she suffered on account of delivery of possession of the unit not in a duly completed manner for the absence of amenities, if there were any on that account.

8. However, the argument advanced concerning seeking refund of the amount charged on account of super area is found to be without any merit or substance in view of the fact that there is an agreement dated 26.12.2022 executed between the parties and its terms and conditions are since binding upon them. In the said

agreement itself the nature of total area and the manner it is to be sold has been clearly and categorically mentioned with its description given separately for both carpet area and super area. The measurement of both carpet area and super area has also been mentioned clearly those being 1220 sq. ft. and 1820 sq. ft. respectively. The total sale consideration of the apartment including GST etc. has also been duly mentioned in the agreement that has been executed and signed by both the parties. As such whatever has been agreed upon and all the terms and conditions thereof have to be abided by the parties to the agreement. Here the well-known principle of mercantile jurisprudence '***Pacta Sunt Servanda'*** also applies which means **'pact must be kept'**. This debars the complainant to stake her claim for the refund of whatever amount she has paid as per the terms and conditions of the buyer's agreement between them. Hence, the much-emphasized contention on the part of complainant arguing that the promoter could only charge for the carpet area and not for the super area holds no merit and is accordingly rejected. Besides, question of any refund whatsoever arises only in case allottee intends to withdraw from the project in accordance with the provisions of Section 18 of the Act or at the most can ask for adjustment of the amount if charged or paid against the terms and conditions of the agreement.

9. With regard to the contention raised on behalf of the respondent that complainant was guilty of suppressing true and material facts specially with regard to settlement also this bench does not find much force or substance in it. The rights being claimed by the complainant here are her statutory rights as has been discussed above and such rights cannot be taken away or denied to an allottee. It is only

where a discretion of the Court is involved a right or relief can be denied to a person who does not come to the Court with clean hands on the basis of equity. Otherwise also promoter has more or less failed to prove as to what kind of settlement if any was reached between the parties before the possession was actually delivered to her for which no tangible proof is there.

10. The provisions of Section 18 of the Act grant an indefeasible right in favour of an allottee which cannot be taken away under any circumstance. Section 18 speaks 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

Accordingly, the claimants are held entitled to interest for the period of delay.

11. Having discussed all those things above and as an outcome thereof, the present complaint is partly accepted and the

respondent/ promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 for the delayed period of possession i.e. 14.12.2021 to 11.08.2024 when the possession was delivered to complainants.

12. 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**