

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

Complaint No.0174 of 2025
Date of Institution: 18.04.2025
Dated of Decision. 11.05.2026

ASHOK KUMAR BANSAL, H. NO. 302 , GALI NO. 9, WARD NO. 15,
PREM BASTI, Sangrur, Punjab

....Complainant

Versus

M/S OMAXE CHANDIGARH EXTENSION DEVELOPERS PRIVATE
LIMITED THROUGH DIRECTORS, SCO 139-140, 1ST FLOOR,
MADHYA MARG, SECTOR 8-C, Chandigarh-160008

....Respondents

Present: 1. M. Shahnawaz Khan, Advocate, for the complainant,
2. Shri Vishal Singhal, Advocate, for the respondent

**Order u/s. 31 read with Section 40(1) of Real
Estate (Regulation & Development) Act, 2016 read
with Rules 16, 24 and 36 of Pb. State Real Estate
(Regulation & Development) Rules, 2017.**

ORDER U/s 31

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 18.04.2025 by the complainant in his individual capacity against the respondent seeking following reliefs:

1.1 Respondent No.1 to be directed to pay interest for delayed possession on amount paid i.e. Rs.74,50,925/- till the date of valid Offer of Possession after obtaining OC/CC;

1.2 Respondent be directed to charge only for "Actual Carpet area" i.e. measuring 117.34 Sq. Meters/1263.03 Sq. Ft as per disclosure made before RERA Authority by the promoter while registration of project, and not for the super area i.e. 178.37 Sq. Meters/ 1920 Sq. ft as per layout and disclosure made before RERA Authority.

1.3 Respondent No.1 be directed to refund or adjust the excess amount of Rs. 28,82,444/- for excess area of 61 Sq.mtr @ Rs.657 per sq. mtr charged from the complainant in the name of Super Area, instead of Carpet area.

1.4 Respondent Company be directed to offer a legitimate offer of possession to the complainant and further execute Conveyance Deed after obtaining OC/CC from the competent authority.

1.5 the Local Commissioner shall be appointed to extract the actual specifications in relation to the records submitted with the RERA Authority and to corroborate the same with the facts of the case

1.6 Respondent be directed to Pay Rs. 2,50,000/- as cost of litigation.

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

2.1. The complainant had booked a Residential Unit Penthouse 3-BHK bearing No. TLC/CASPEAN-D/FIRST/101, having Area of 1920 Sq. Ft./178.37 Sq. Mtr. in Tower CASPEAN-D in the Project named "THE LAKE", situated at Omaxe New Chandigarh, SAS Nagar, Punjab at total sale price of Rs.87,11,536/- including all additional costs vide allotment cum Buyer's Agreement dated 12.06.2015 was executed with the complainant. Copy of the same is ANNEXURE C-1. The BSP of the said unit is Rs. 69,44,799/-.

2.2 The complainant has paid a total amount of Rs.74,50,925/- including GST till date. Copy of Statement of Account dated 12.04.2025 is marked and annexed as ANNEXURE C-2.

2.3 As per the Clause 40 (a) of the allotment letter dated 12.06.2015, the possession of the unit was to be delivered by the respondent within 42 months from the date of execution of the present allotment letter i.e., till 11.12.2018. The respondent company did not offer any possession till date and the project is nowhere near completion. Neither any interest for delayed possession nor any compensation has been paid by the promoter to the complainant till date.

2.4 A Tripartite Agreement dated 17.08.2015 was executed among the Complainant, the Respondent Company, and State bank of India. The complainant availed home loan of Rs. 40,00,000/- from the bank. Copy of Tripartite Agreement dated 17.08.2015 along with permission to Mortgage dated 17.08.2015 is marked and annexed as Annexure C-3 (COLLY).

2.5 Furthermore, the Respondent Company was to provide the carpet area measuring of 117.34 Sq. Meters/ 1263.03 Sq. Ft as per disclosure made to RERA Authority while registration of project but the complainant has been illegally charged for super area of 178.37Sq. mtr/ 1920 Sq. Ft. instead of Carpet area. The respondent company has violated various Sections of RERA Act 2016 by not making adherence to the sanctioned plan/ layout plan and has charged Rs.23,76,421/- in excess (for 657 Sq. ft./61 sq. mtr.) illegally from the complainant and respondent has threatened to cancel the allotment in case of non-payment. Copy of records uploaded at the website of RERA Authority by the respondent & Rera Registration is annexed as Annexure C-4(Colly).

2.6 Till date, the Respondent Company has not refunded the excess amount of Rs.28,82,444 /- which has been illegally charged by the way of

misrepresentation against the excess area. As per clause 1.2 of the model Buyer agreement "Promoter can only charge for the carpet area" and not for the super area.

2.7 The respondent has mortgaged the entire project to the S'wamih Investment Fund-I' without taking No Objection Certificate (NOC) from the Allottees. Further the letter dated 07.08.2024 with regard to mortgage of the project expressly states that a "NOC will be required from the fund before the Sale, handover, possession or registration of any home unit in the project". That is grave violation of Section 15 of the RERA Act,2016, therefore the Respondent Company must be penalized in accordance with law. Copy of letter dated 07.08.2024 is annexed as Annexure C-6.

2.8 The complainant has also referred the decision of this authority i.e. "Kanhaiya Lal Kalra Vs. M/S Omaxe Chandigarh Extn. Developers Pvt. Ltd." in GC No. 0383 of 2023 vide Order dated 01.02.2024 and "Anuradha Sipehiya Vs Citi Centre Developers" in complaint No. GC/1434/2019.

3. Notice of the complaint was served on the respondents and the respondent no.1 has filed a detailed reply dated 22.10.2025 in the matter which is discussed below:

3.1. The Complainant applied for the allotment of Flat No. TLC/CASPEAN-D/FIRST/101 having a Super Area admeasuring 1920 sq. ft. (178.37 sq. mtrs.) in the Residential Project "The Lake" situated at Omaxe New Chandigarh, for a Basic Sale Price of Rs. 87,11,536/- exclusive of applicable taxes and other charges. As per Clause 7 and Clause 8 of the Allotment Letter and Agreement for Sale dated 12.06.2015, it was categorically conveyed to the Complainant that he/she is liable to pay the price of the unit together with other applicable charges, which were to be calculated on the basis of the Super Area of the unit. The term "Super Area" was clearly defined and explained in the Agreement as comprising not only the built-up

area of the unit but also the pro-rata share of the common areas of the project. The Super Area of the said unit was explained to mean the covered area of the unit, including the entire area enclosed within its periphery walls, the area under walls, columns, balconies, and lifts, as well as half the area of common walls shared with adjoining premises/units. In this regard reference is made to clause 7 and 8 of the allotment letter wherein it is stated that the price of the said unit and other charges are calculated on the basis of super area vis-a-vis unit area and also to clause 16 wherein it is clearly stated that super area is only tentative and the final super area is determined after the completion of construction of the flat. The Complainant entered into the transaction with full knowledge, consent, and acceptance of the terms and conditions duly set out in the documents executed between the parties. A copy of the Application Form-cum-Provisional Allotment dated 15.09.2014 is appended herewith as Annexure R-3, and a copy of the Allotment Letter-cum-Agreement for Sale dated 12.06.2015 is appended herewith as Annexure R-4.

3.2 The respondent submitted that period of completion under the allotment letter is not binding and reproduced the clause 40(a) page 10 of the allotment letter which state that the company shall try to complete the development/construction of the Unit/Project within 42 month from the date of signing of the allotment letter by the allottee or approval of the building plans, whichever is later and within such further extended grace period of 06 months. Further, the completion of development of the unit within 42 months is subject to force majeure conditions. The respondent stated that the calculation of period of construction should exclude 6 months extension given by RERA for covid-19. The Ministry of Finance declared COVID-19 as a Force Majeure event. Moreover, the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh, in the landmark judgment of Ramesh Kumar Vs. Omaxe delivered on 10.05.2023 as well as Hon'ble State

Consumer Dispute Redressal Commission, Punjab , in the landmark judgment of Raman Kumar Vs. Omaxe delivered on 07.08.2024 have recognized the impact of the pandemic and granted a 9-month extension for possession due to Force Maieure conditions. The respondent further stated that as per allotment letter, there was an indicative period which is an approximate period within which the respondent company will try to finish the construction unless it encounters force majeure events, delayed payment by the allottee or any other reason beyond the control of the company.

3.3 The respondent stated that the tri-partite agreement dated 17.08.2015 between the complainant and State Bank of India and the respondent was executed. A copy of the Tripartite Agreement dated 17.08.2015 is annexed herewith for ready reference and placed on record as Annexure R-5.

3.4 The Respondent has always acted in good faith and has honored all its contractual commitments and obligations. The Respondent has fully adhered to the model Buyer's Agreement as prescribed under the Punjab State Real Estate (Regulation & Development) Rules, 2017. Furthermore, the assertion that the Respondent was required to charge only for the carpet area and not for the super area is a misinterpretation of the terms of the Builder Buyer Agreement. The charges levied were in full compliance with the terms of the agreement and were transparently communicated to the Complainant.

3.5 It was submitted that the delay in construction and consequent offer of possession to the Complainant has been significantly caused by the complainant's own default in making timely payments as per the payment schedule stipulated under the Agreement for Sale. A copy of the Delay Interest Ledger dated 03.10.2025, evidencing the complainants' delay in making timely payments under the Agreement and the consequent

interest accrued thereon, amounting to INR 32,179.09, is annexed herewith as Annexure R-6.

3.6 It is submitted that the Complainant's application along with the said Allotment/Agreement for Sale dated 12.06.2015 are pre-RERA agreements, executed prior to the enforcement of the Real Estate (Regulation and Development) Act, 2016 (RERA Act), and as such, do not attract the provisions or binding effect of the RERA Act, which came into force much later. The Complainant cannot, therefore, seek to shelter himself under the provisions of the RERA Act to justify or legitimize his own willful non-compliance, and he is not entitled to claim any advantage under the Act for his deliberate omission or violation of the terms of the executed Agreement.

3.7 Respondent submitted that the Complainant's reliance on the judgment of the Hon'ble Authority in *Kanhaiya Lal Kalra Vs. Omaxe Chandigarh Extension Developers Pvt. Ltd.*, GC No. 0383 of 2023, is entirely misplaced and is not ipso facto applicable in each and every case as facts of each and every case are separate and distinct. The factual position in the present matter is wholly distinct, as the Complainant's Allotment-cum-Agreement to Sell was executed on 12.06.2015, long before the RERA Act came into force.

3.8 Respondent further submitted that the SWAMIH Investment Fund I - Special Window for Affordable and Mid-Income Housing (SWAMIH) was announced on 6th November 2019 by the Finance Minister, Smt. Nirmala Sitharaman. The Union Cabinet cleared a proposal to set up a 'Special Window' in the form of an Alternative Investment Fund (AIF) to provide priority debt financing for the completion of stalled housing projects. SBI Ventures Limited (formerly known as SBICAP Ventures Limited) was assigned the role of Investment Manager for this Special Window. Accordingly, the SWAMIH Fund is a Government/SBI-backed initiative with full transparency and regulatory oversight. The portrayal of facts by the

Complainant regarding the Fund is highly misleading, incorrect, and constitutes a deliberate misrepresentation.

4. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The complainant's counsel stated that as per para 9.2 of the Model Agreement, the allottee is entitled to stop making further payments to the respondent company as demanded by them and also referred the decision of Hon'ble Supreme Court in the case of "Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna" civil appeal no. 5785 of 2019, 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. The counsel of the complainants also referred some other decision whose facts are not similar to the facts of the present case.

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 during hearing fixed for arguments. Matter is reserved for detailed order.

6. The complainant was allotted Residential Unit 3BHK bearing No. TLC/CASPEAN-D/FIRST/101, having Super Area of 1920 Sq. Ft./178.37 Sq. Mtr. in Tower CASPEAN-D in the Project named "THE LAKE", situated at Omaxe New Chandigarh. As per Allotment cum Buyer's Agreement dated 12.06.2015, the total price of the unit is Rs.87,11,536/-. The date of possession is 11.06.2019. Till date no offer of legal possession is offered to the complainants by the promoter. Total payment Rs.74,50,925/- is made till date. As noted above valid possession was to be handed over to the

complainant on or before 11.06.2019 (42 months plus 6 months grace period) and it is apparent on record that there is more than 6 years delay.

6.1 The plea of the respondent that the complainant has also made payment after due date and as per section 19(7) of the RERA Act, the complainant is liable to pay interest on his delayed payments at the rate prescribed in Rule 16 of the Rules of 2017. The contention of the respondent is partly acceptable in respect of interest pertains to the period before due date of possession only can be adjusted against interest payable to the complainant by the respondent. Further, complainant is not under obligation to continue with payments after the agreed due date of possession.

6.2 The complainant has raised the issue that the respondent no.1 has been illegitimately charged for Super Area instead of Carpet Area and also charged extra amount of Rs. 28,82,444/- for 657 Sq Ft/61 Sq. mtr. In this regard, it is pertinent to mentioned that the agreement/allotment letter was signed between the parties on 12.06.2015, which is prior to the enactment of RERA Act. The said agreement was signed by the complainant with open eyes and without any undue influence. There is no express provision in RERA Act that the agreement executed before enactment of RERA Act will be revised as per the Form 'Q' after registration of ongoing project with RERA Authority. Therefore, the contention of complainant on issue that price of the unit in on basis of super area is not acceptable.

6.3 Further, arbitration clauses in agreements cannot override statutory remedies available under RERA and the same had already been decided in many cases by this Authority i.e. GC No. 1462/2019 decided on 07.04.2021 titled as Satwant Boparai Vs. Omaxe Chandigarh Extension Developers Pvt. Ltd.

6.4 The respondent also argued that pandemic of Covid-19, which occurred with effect from March 2020 onwards and possession as claimed by complainants was to be handed over on 11.06.2019 (48 months from date of allotment letter) and it is established on record that till today possession of unit has not been handed over to the complainant has delayed the project. Regarding the pandemic of Covid-19, due to which respondent was not able to give possession of the Unit to the complainant is without any substance as the date of possession was 11.06.2019 and the pandemic started from March 2020 onward i.e. after due date of possession. Hence non-performance of the promoter cannot be condoned due to Covid-19 lockdown in March-2020 in India. Further, incorporation of one-sided and unreasonable clause in the Apartment Buyer's Agreement constitutes unfair trade practices as held by the Hon'ble Supreme Court decision titled 'Ireo Grace Realtech Pvt Ltd Vs Abhishek Khanna, civil appeal no. 5785 of 2019.

6.5 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 complainant. Thus, the complainant is 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.

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)"*

6.6 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.

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

7.1 To issue Offer of Possession letter in writing to the complainant within the time stipulated as per term and condition mentioned in column 40(a) of the 'allotment letter' dated 12.06.2015 after receiving the completion certificate from the competent authority.

7.2. As per account statement dated 12.04.2025, payment of Rs.70,86,324/- out of total payment of Rs.74,50,926/- was paid before 11.06.2019 i.e. due date of possession. Therefore, the interest to the complainant will be calculated from the due date of possession of unit on amounting Rs.70,86,324/- and interest on remaining amount i.e. Rs.3,64,602/- from date of respective payments made to the respondent till actual realization of the refund.

7.3 As a net result of the above discussion, this complaint is accordingly partly 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 i.e. Rs.70,86,324/- w.e.f. 11.06.2019 the agreed date for handing over possession to 10.05.2026, the arrear of interest be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017.

7.4 For the payment amounting Rs.3,64,602/- made after possession date i.e. 11.03.2019 interest under section 18(1) of the Act at the rate of 10.80%

per annum w.e.f. date of respective payment to 10.05.2026. The above 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.

7.5 The calculation of interest up to 10.05.2026 is calculated as under:

Interest from	Principal amount	Interest calculated till	Rate of Interest	No. of days	Interest amount
11.06.2019	70,86,324	10.05.2026	10.80% per annum	2555	53,57,247
19.07.2019	3,64,602	10.05.2026	10.80% per annum	2518	2,71,642
	74,50,926		Total		56,28,889

7.6 The arrear of interest amounting Rs.56,28,889/- would 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 and submit the compliance report. The arrear of interest amounting Rs.56,28,889/- would 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 and submit the compliance report.

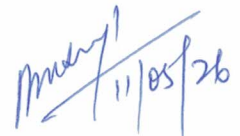
7.7 Respondent is further directed to pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum i.e. Rs.67,058/- per month (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by complainants i.e. Rs.74,50,926/- from the date of this order till the date of delivery of legal valid possession of a Residential Unit 3-BHK bearing No. TLC/CASPEAN-D/FIRST/101, having Super Area of 1920 Sq. Ft./178.37 Sq. Mtr. in Tower CASPEAN-D in the Project named "THE LAKE", situated at Omaxe New Chandigarh, Punjab or two months after getting the completion certificate by competent authority and offering possession whichever is earlier and submit the compliance report. As per record, respondent has

neither furnished any Completion/Occupation Certificate from the competent authority nor offer any possession of unit to complainant.

8. 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.

9. 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.

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



(Binod Kumar Singh)
Member, RERA, Punjab