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

Complaint No.0018 of 2024
Date of Institution :15.01.2024
Date of Decision: 12.05.2026

Sh. Bhupesh Rana and

Mrs Ambhika Rana,

Both at House no. 448, Sector-12, Panchkula, Haryana-134112

.... Complainant

Versus

M/s Ambika Realcon Private Limited, SCO 18-19, 1st Floor, Sector-9 D, Chandigarh-160009

.... Respondent

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration Number: PBRERA-SAS80-PR0421)

Present: Shri Hoshiar Chand, Advocate for the complainant
Shri Manpreet Singh Longia, 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 15.01.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 To direct the respondent to offer the possession of apartment No. FP/ASTER/B/502 on 5th floor in Tower No. Aster B (Tower No. 2 B) in "Florence Park" complete in all respects along with interest for the period of delay in possession with effect from 31.12.2022 till offer of the

possession of the said apartment after obtaining the Occupancy Certificate and Completion Certificate.

1.2 To quash the letter dated 05.12.2023 issued by the respondent being illegal in the eyes of law.

1.3 To direct the respondent not to charge any interest on the amount demanded as per letter dated 05.12.2023 since the said demand is illegal in the eyes of law and has been raised without having obtained occupation certificate from the competent authorities.

1.4 To pay Rs. 50,000 as litigation expenses to the complainants.

2. Brief facts as submitted by complainants in their complaint are summarized below: -

2.1 The complainants booked an Apartment in the project being developed by the respondent under the name and style of "Florence Park", situated at Village Dhode Majra, Sub Tehsil- Marji, Mullanpur, New Chandigarh, District S.A.S. Nagar, Mohali, Punjab by paying a booking amount of Rs.14,66,551/-. The complainants were allotted Unit No. FP/ASTER/B/502, having super area Approx. 2065 sq. ft. and carpet area 1375 sq. ft. on 5th floor in Tower No. Aster B (Tower No. 2 B) for a total sale consideration of Rs.87,00,000/-. The agreement for sale was executed between the Complainants and the respondent on 18.12.2021. As per Clause 7.1 of the agreement for sale, the respondent was to deliver the possession of the said unit by 31.12.2022. The copy of the agreement for sale dated 18.12.2021 is annexed herewith as Annexure C-1. The complainants have made the total payment of Rs. 61,87,773/- to the respondent till date. The copies of available payment receipts are annexed herewith as Annexure C-2 (colly.). The complainants have paid around

65% of payment due towards the consideration of the said unit and till date possession has not been offered by the respondent. The respondent instead of offering possession to the complainants sent a letter dated 05.12.2023 for the settlement of accounts before offering possession of the said unit and demanded Rs. 26,15,716.33/- from the complainant without incorporating any compensation for delay and without completing the flat in question. The copy of letter dated 05.12.2023 is annexed herewith as Annexure C-3. The respondent failed to commit a definite timeline for handing over the possession of the said apartment and also unable to produce any kind of occupation certificate. Complainants further stated that they wish to remain in the project and want to take the possession of the unit allotted to them along with interest on the deposited amount from stipulated date of possession till offer possession of the said apartment complete in all aspects including occupation and completion certificate.

3. Upon notice, Shri Manpreet Singh Longia, Advocate appeared for respondent and submitted reply dated 17.07.2025 which is summarized below: -

3.1 The respondent submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have admitted by the answering respondent, save and except what are expressly and specifically admitted, and the rest may be treated as travesty of facts.

3.2 Respondent admitted allotment of Flat No. FP/ASTER/B/502 and total sale consideration was Rs.82,98,300 (excluding GST). The Complainants opted for the Special Payment Plan - 40:30:30, which included a special discount of 4.33% + 2%. The Respondent issued an

Allotment Letter dated 07.09.2021 in favour of the Complainants (Annexure R-1). The Complaints have consistently defaulted in making timely payments in accordance with the opted payment plan.

3.3 The respondent submitted that as per the clause of 33 of the agreement whereas clearly mention that if there will be some disputes/ obligation between the parties then the same shall be settled amicably by the mutual discussion, falling which the same shall be settled through the Adjudicating Officer appointed under the Act.

3.4 Respondent refer the decisions of Hon'ble Apex Court, whereby it has categorically been laid down that the agreed clauses of contract are binding on the parties and the courts shall not interfere with the terms and conditions agreed to between the parties.

3.5 Respondent also refer the decision of the Ld. State Consumer Disputes Redressal Commission, Chandigarh, granted a time extension to developers on account of covid-19 in case where the delay penalty was imposed due to the late delivery of possession in Complaint No. 9 of 2023 titled as *"Ramesh Kumar versus M/s Omaxe Chandigarh Extension Developers Private Limited* decided on 10.05.2023,

3.6 The respondent also argued that the alleged dispute as raised in the present complaints ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 [as amended vide the Arbitration & Conciliation (Amendment) Act, 2015] in terms of "Clause 34" of the Agreement to Sell. The filing of present reply is without prejudice to the said fact and it should not be construed that the Answering Respondent has agreed to submit to jurisdiction of this Hon'ble Commission or that it has waived its plea for referral to alleged dispute to arbitration. The Answering Respondent prays that the matter be referred to arbitration as

not only does the amended Section 8 of the Arbitration & Conciliation Act, 1996 make it mandatory to refer disputes to arbitration notwithstanding any judgment of any court but also due to fact that present case raises complex questions of fact and would involve detailed evidence.

4. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. The complainant has submitted that the most of the payments has been made well within time and even one or two payments got delayed but the respondent has accepted the delayed payment along with delayed interest and as such the respondent is estopped from raising the said issue. The complainants submitted that the respondent cannot take the benefit of covid-19 as force majeure in view of the Ld State Commission judgement in complainant no.9 of 2023 (supra) as Agreement to Sale was executed after Covid-19 pandemic was over and as such the respondent cannot take the plea of Covid-19 being the reason for delay in handing over the possession.

5. The undersigned heard arguments of both the counsels on the stipulated date.

6. It is argued by complainant that he had paid Rs.61,87,773/- against the total sale consideration of Rs.87,00,000/- (including GST). As per clause 7.1 of the agreement dated 18.12.2021 possession of the flat was to be delivered 31.12.2022. This stipulation had however been violated by the respondent and even after delay of more than 3 years, possession of the unit was still not handed over to the complainant. Therefore, complainants' prayer that the respondent be directed to pay interest at the prescribed rate of interest i.e. MCLR of SBI + two percent for the period of delay till the delivery of possession.

7. On the other hand, on the last date of hearing Counsel of the respondent argued that the complainants had delayed making payments as per agreed payment plan. Counsel for respondent reiterated the contents of his reply and stated that the Government has further extended a period of 6 months for all real estate projects in view of Covid-19 pandemic. The counsel of the respondent refers the decisions of Hon'ble Supreme Court on the issue that the agreed clauses of contract are binding on the parties. The respondent also stated that the alleged dispute as raised in the present complaint ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 in terms of "Clause 34" of the Agreement to Sell.

8. This authority has carefully considered the rival contentions of both the parties and perused the record of the case. The 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.s. GC No. 1462/2019 decided on 07.04.2021 titled as Satwant Boparai Vs. Omaxe Chandigarh Extension Developers Pvt. Ltd.

8.1 Regarding the pandemic of Covid-19, due to which respondent was not able to give possession of the unit to the complainants is without any substance as the date of agreement was 18.12.2021 and the pandemic period started from March 2020. It is noteworthy that the agreement was executed on 18.12.2021 after the occurrence of Covid-19. If respondents can execute the agreement and accept the amount for the unit on 18.12.2021, then they are liable to hand over possession on time as prescribed in the agreement dated 31.12.2022.

8.2 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.

8.3 At the outset it is held that the Act provides for payment of interest in case of delay in handing over of possession and this legal right of an allottee cannot be defeated by the lack of such a provision in any document issued by a promoter. Finally, the Act and its Rules only require that the matter pursued by a complainant should not be pending before any other court or authority. The complainants have certified to this effect in para 7 of their complaint. It was well within the complainant's right to decide which of the alternative remedies available to them should be pursued. It is accordingly held that the arguments raised on behalf of the respondent are not valid; and there has been a delay on the part of the respondent in handing over possession of the apartment to the complainants as agreed. Although it was contended that despite reminders timely payments were not made as per the agreement and its schedule, yet no counter claim has been made by the respondent on the aspect in its reply filed. As such in the absence of any details qua that no relief could be claimed by the respondent nor such an unestablished claim could negate the right of claiming interest on the delayed possession as has been conferred upon an allottee by the provision of Section 18 of the Act which is an indefeasible right. 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. Violation of Section 18(1) of the Act is therefore established; and the complainants are entitled to the relief provided therein. 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) ..

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..."

8.4 The respondent has offered fit out possession to the complainant on 05.12.2023 but the complainant has not taken the possession as it was without Occupation Certificate. The respondent again offered fit out possession on 12.02.2025 but the same was also without Occupation Certificate. Thereafter, the respondent has obtained Partial Completion certificate on 09.08.2025 and Occupation certificate on 01.10.2025 from Competent Authority. The respondent has offered the possession to complainant on 07.11.2025 of the flat bearing No. FP/ASTER/B/502, having super area Approx. 2065 sq. ft. and carpet area 1375 sq. ft. on 5th floor in Tower No. Aster B (Tower No. 2 B), Florence Park, New Chandigarh, Punjab along with details of balance payment. Respondent also issued reminder letter for offer of possession on 02.12.2025.

9. In view of above discussion and legal provision, this complaint is allowed and it is held that complainant is entitled to interest for the period from 01.01.2023 till the date of offer of valid possession of the flat i.e. 07.11.2025. Further, the respondent-promoter is directed to claim charges as per Agreement for Sale dated 18.12.2021 only.

9.1 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 i.e. Rs.61,29,293/- w.e.f. 01.01.2023 the date agreed for handing over possession till date of offer of valid possession i.e. 07.11.2025 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.

9.2 For the payment amounting Rs.58,480/- made after possession date i.e. 31.12.2022 interest under section 18(1) of the Act at the rate of 10.80% per annum w.e.f. date of respective payment to till the date of offer of possession i.e. 07.11.2025. 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. Therefore, the calculation of delayed interest is calculated as follows: -

Interest payable from	Principal Amount Paid	Interest calculated till	Rate of Interest as on 24.03.2026	No of days	Interest Amount
01.01.2023	61,29,293	07.11.2025	10.80% pa	1041	18,87,957
27.06.2023	58,480	07.11.2025	10.80% pa	864	14,947
TOTAL	61,87,773				19,02,904

9.3 In view of the aforesaid legal provisions and judicial pronouncement, it is hereby directed that the above amount shall be recovered as Land Revenue as provided u/s 40(1) of the RERD Act, 2016. The total amount due towards delayed interest upto 07.11.2025 is calculated at an amount of Rs.19,02,904/- and the respondent is directed to make the payments within 90 days to the complainant. Further, in view of the fact that the offer of possession has already been made by the respondent-promoter on 07.11.2025, if any amount is due towards the complainant, then the said

payment will be adjusted towards the amount payable to the allottee-cum-complainant by promoter and it will be adjusted by the promoter as payment received from the allottee payable by the promoter at the time of offer of possession.

10. It may be noteworthy that in case compliance report is not submitted by respondent after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act of 2016.

11. The complainant is also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

12. Since the respondent fails to provide ready to move in possession of the apartment to the Allottee within time period specified in para 7.1. As per conditions 9 of Form 'Q', Allottee is entitled to stop the further payment to promoter as demanded by the promoter and promoter shall correct the situation by completing the construction milestones and only thereafter the Allottee be required to make the next payment without any interest.

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

14. File be consigned to record room after due compliance.

12/5/26

(Binod Kumar Singh)
Member, RERA, Punjab

Rera Punjab