

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

Complaint No. RERA/ GC No.0445 of 2023

Date of filing: 11.12.2023

Date of decision: **14.05.2026**

1. Megha Chowdhri
  2. Varun Kumar Sharma
- Both residents of # 168B, Rani Ka Bagh, Amritsar  
Cantonment, Punjab
- ...Complainant

Versus

M/s Omaxe New Chandigarh Developers Pvt. Ltd. Regd. Office at  
10, Local Shopping Centre, Kalkaji, New Delhi, Delhi.

... Respondents

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

Present: Mr. Mohd. Sartaj Khan, Ms. Divya Jyoti and Ms. Akshra,  
Advocates representatives for the complainants  
Mr. Arjun Sharma, Advocate representative for respondent

**ORDER**

The present complaint has been filed under Section 31 of  
the Real Estate (Regulation and Development) Act, 2016 (hereinafter  
referred to as "the Act"), read with Rule 37 of the Punjab State Real  
Estate (Regulation and Development) Rules 2017 (hereinafter referred  
to as the Rules) seeking possession of the allotted unit alongwith  
interest for the delayed period relating to a RERA registered project

namely "The Lake" situated at Omaxe New Chandigarh developed by the respondent company.

2. The gist of the complaint is that complainants being allottees as defined under Section 2(d) of the Act, were allotted a residential Pent House Unit No.TLC/MYSTIC-A/TWENTY SECOND/2202, having Super/ Carpet Area of 2570/1498 sq. ft. in Tower No. Mystic-A in the project "The Lake" situated at Omaxe New Chandigarh. The total price of the unit in question was Rs.1,85,26,170/- excluding GST out of which complainants had paid a sum of Rs.76,03,401 including GST till date. Accordingly, Buyer's Agreement dated 04.01.2023 was executed. As per Clause 7.1 of the Allotment-cum-Buyer's Agreement dated 04.01.2023, the possession of the Unit was to be delivered on **31.07.2023**. But the respondent company did not offer any possession till date. The project was nowhere near completion and was thus delayed. Neither the interest for delayed possession nor any compensation was paid to them by the promoter till date. It was then submitted that the respondent company was to provide the Carpet area measuring 139.17 sq. meters (1498 sq. ft.) and the same area was registered with RERA Authority records also but the complainants had been illegally charged for Super area (2570 sq. ft.) instead of Carpet area by manipulating RERA Model Agreement. The respondent had charged Rs.7056/- per sq. ft. instead of Rs.6190/- per sq. ft. thereby collecting an excess amount of Rs.75,64,032/- through misrepresentation and without lawful authority. Till date, the respondent company neither adjusted the excess amount paid nor refunded the same to the complainants of the excess area i.e., 1072 sq. ft.

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

4. In the reply filed on behalf of the respondent, the factum of booking of the unit in question by the complainants in the project of the case in hand has been admitted. It was submitted that Occupation Certificate qua the unit in question was received on 11<sup>th</sup> September 2023 and, thereafter, vide letter dated 30<sup>th</sup> October 2023, the respondent company offered valid and legal possession of the unit in question to the complainants but they did not come forward to take physical possession. As per Section 19(1) of the 2016 Act, they were bound to pay holding charges for the period of delay beyond 30<sup>th</sup> December 2023 to the respondent company. 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 down in the Buyer's agreement. The charges for the super area were clearly defined and agreed upon in the Buyer's Agreement dated 04.01.2023. 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.

5. While putting forth the case of complainants it was contended by the learned counsel that in their present complaint, they seek interest for the delayed period of possession apart from a

direction to the respondent/ builder to handover the possession upon obtaining OC as well as to refund the excess amount they had already charged from them as super area charges. It was thus argued that builder/ promoter could not have charged for the super area as in accordance with the provisions of the Act only carpet area could have been sold or charged which was only 1498 Sq. Ft./ 139.17 Sq. Mtrs. As per the buyer's agreement dated 04.01.2023 the possession of the completed apartment/ unit was to be delivered on 31.07.2023, but no OC has been obtained till date by the promoter. Hence, the complainants were entitled to claim interest for the period possession has been delayed already as well as till possession was delivered on obtaining completion certificate in a duly completed manner. The complainants had already made a substantive payment towards the total sale consideration. The complainants, therefore, seek directions against the respondent to pay delay interest on the amount paid till actual legal possession is offered with valid OC/ CC and to refund the amount illegally charged for excess area.

6. On the other hand, learned counsel for respondent contended that Occupation Certificate qua the unit in question was received on 11<sup>th</sup> September 2023 and, thereafter, vide letter dated 30<sup>th</sup> October 2023, the respondent company offered valid and legal possession of the unit in question to the complainants but they did not come forward to take physical possession. It was then submitted that the respondent had fully adhered to the model Buyer's Agreement as prescribed under the RERD Act. The charges for the super area were clearly defined and agreed upon in the Buyer's Agreement dated 04.01.2023. It was then contended that the delay was due to the

reasons beyond its control, including regulatory and procedural requirements. It was thus finally submitted that claims made by the complainants were not only unjustified but were meritless as well. Their complaint deserved to be dismissed with costs.

7. Upon considering the above submissions and contentions of the parties this bench finds itself in partial agreement with the case put forth on behalf of the complainants. So far as the contention put forth and relief sought for regarding the payment of interest on the delayed period of possession is concerned, the entitlement of the complainants for the same is found to be perfectly valid and justified by virtue of the provisions of Section 18 of the Act.

8. The more or less admitted facts of the case as evident from the record are that the complainants were allotted a residential Pent House Unit No. TLC/MYSTIC-A/TWENTY SECOND/2202, having Super/ Carpet Area of 2570/1498 sq. ft. in Tower No. Mystic-A in the project "The Lake" situated at Omaxe New Chandigarh. The total price of the unit in question was Rs.1,85,26,170/- out of which complainants had paid a sum of Rs.76,03,401 till date. As per Clause 7.1 of the Allotment-cum-Buyer's Agreement dated 04.01.2023, the possession of the Unit was to be delivered on **31.07.2023**. But the respondent got occupation certificate qua the unit in question on 10.10.2023. Thereafter vide letter dated 18.11.2023 respondent company offered valid and legal possession of the unit in question to the complainants but they did not come forward to take physical possession. Copy of the Occupancy Certificate issued by GMADA for the project 'THE LAKE-MYSTIC TOWER- A & B' has been placed on record as well as offer letter issued to complainants. As per Section 19(10) of the Act "every

allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be". As such respondent company is found to be liable to give interest on the amount paid by the complainants w.e.f. 31.07.2023 till 18.01.2024 only.

9. The relevant extract of Section 18(1) of the RERA Act which deals with the matter for seeking refund, interest and compensation in case of non- completion of the project due to default of the promoter runs as under: -

*"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

	xxx	xxx	xxx
(2)	xxx	xxx	xxx
(3)	xxx	xxx	xxx

The right to claim interest on the delayed possession is an indefeasible and unqualified right given to an allottee by the statute

which cannot be taken away or declined. Accordingly, the claimants are held entitled to interest for the period of delay.

10. However, not much weight is found to be there in this contention of the learned counsel for the complainants that no super area could be sold and what could be sold is only the 'carpet area' after the passing of the Act as per the model agreement provided in the 'Form Q' of the rules framed under RERA. Thus, there is no concept of 'super area' nor anything could be charged on the basis of super area or super structure.

The model agreement provided in the Rules does not seek to take away the freedom of contract by putting restraints on it. It only highlights the important and necessary contents of an agreement between buyer and builder, which must form part of it for the sake of bringing clarity and transparency in a sale transaction. The 'Form Q' which is the model agreement for sale provided under the rules. Its highlighted term i.e. term no. 1.2 only requires that the total price for the apartment/ plot based on the carpet area is to be clearly and distinctly mentioned by giving its break-up and clear description so that break-up of the consideration charged separately for the separate nature of area to be sold is clarified. The model agreement thus does not put any restraint or impose any bar on the nature of area to be sold. Such clarification and description have been made important and essential part of the agreement as any deviation or violation of the terms of agreement in this regard by any party could be clearly deciphered that may give rise to certain rights of the aggrieved party to seek compensation etc. as per the provisions of the Act specially u/Ss 12, 13, 14 and 18. In the buyer's agreement executed between the parties

itself, the total area to be sold has been clearly and categorically mentioned with its rate and price in per square feet and per square meters. The total sale consideration of the unit 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**'. As such this principle debars complainants to stake their claim for the refund of whatever amount that has been paid or agreed to be paid as per buyer's agreement between them.


Moreover, the project has been duly registered with the Authority upon RERA Act coming into force and it has not been shown if the promoter had not disclosed all the project details i.e. the size of apartment based on carpet area even if such apartment had been sold earlier on any other basis like super area, super built up area or built up area etc. which shall not affect the validity of agreement entered into between promoter and the allottee to that extent as per rule 4(3) of Punjab State Real Estate (Regulation and Development) Rules, 2017 at that time. Rather it has been clearly mentioned in the terms at Sr. no.1 (1.2) that the total price for the said unit was based on the 'super area' which was Rs. 1,85,26,170/- excluding GST as per detailed break-up given in Schedule C-1 of the agreement. At point G of the agreement a break-up of 'super' as well as 'carpet area' of the sold unit has been mentioned as 2570 and 1498 sq. ft. respectively. Hence the agreement between the parties has to prevail. All the terms and conditions of the agreement have to be adhered to and complied with

by the parties unless such term and condition is in contradiction and in conflict with the terms mentioned in the model agreement prescribed in Form Q of the RERA rules, 2017 meaning thereby those are not in derogation or inconsistent with the terms and conditions set out by the Act and the Rules and Regulations made thereunder. Complainant side has not been able to show if referred demand or charges were in derogation of the terms and conditions mentioned in the Form prescribed. Rather another rule of mercantile jurisprudence '**Caveat emptor**' also applies in the matter which means '**buyer the beware**'. So, complainants should have been vigilant enough about the terms and conditions duly mentioned in the agreement.

11. But definitely in the opinion of this bench nothing can be charged for an unilateral increase either in the carpet area or in super area if so has not been agreed upon by the parties in the buyer's agreement that has to be ofcourse in the form as prescribed in accordance with Section 13(2) of the Act. RERA rules, 2017 providing model agreement seek to supplement Section 13(2) of the Act that requires an agreement to be in the form as may be prescribed which shall specify the particulars of development of the project including the construction of building and apartments, alongwith specifications and internal development and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed. Model agreement thus seeks

to guide the parties for the sake of clarity of things agreed upon so that in case of dispute between them and the rights of the parties thereof could be properly adjudicated upon and determined. It is thus held that all the terms and conditions of the agreement are binding and nothing can be charged over and above those unless those are against the terms provided in the said Form Q or in conflict with those.

12. Accordingly, as an outcome of above discussion, the complaint is partly accepted and the respondent is directed to pay interest on the amount paid by the complainants at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 (today's highest MCLR rate plus 2%) w.e.f. 31.07.2023 till 18.01.2024 only. The complainants shall take possession of the unit so offered after making all the pending payments, as provided in the buyer's agreement. The conveyance deed shall be executed thereafter in accordance with law within time-frame prescribed.



13. 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**