

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

Appeal No.80 of 2023

M/s Omaxe New Chandigarh Developers Pvt. Ltd. (formerly known as M/s Omaxe Chandigarh Extension Developers Private Limited), through its Authorized Representative/Signatory namely Sh. Vishal Chawla son of Sh. Rajesh Chawla, Omaxe City, 111th, Milestone, Near Badke bala ji Bustand, Jaipur/Ajmer express way, Jaipur, Rajasthan, 302026

Second Address: India Trade Tower, First Floor, Baddi Kurali Road, New Chandigarh, Mullanpur, District Shabzada Ajit Singh (Mohali), Punjab, Pin Code 140901

...Appellant

Versus

Prithvi Pal Singh R/o Flat No.303/B, Saket Plaza, Jamal Road, Pulwan, District Patna, Bihar, Pin Code 800001

....Respondents

Memo No. R.E.A.T./2024/ 14

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST FLOOR,
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,
CHANDIGARH-160018.



Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this **15th**
day of January, 2024.

Dr. Anand Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 80 of 2023

MEMO OF PARTIES

M/s Omaxe New Chandigarh Developers Pvt. Ltd. (formerly known as M/s Omaxe Chandigarh Extension Developers Private Limited), through its Authorized Representative/Signatory namely Sh. Vishal Chawla son of Sh. Rajesh Chawla, Omaxe City, 111th, Milestone, Near Badke bala ji Bustand, Jaipur/ Ajmer express way, Jaipur, Rajasthan, 302026

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...Appellant

Versus

Prithvi Pal Singh r/o Flat no. 303/B, Saket Plaza, Jamal Road, Pulwan, District Patna, Bihar, Pin Code 800001.

...Respondent-Complainant



Place: Chandigarh.
Dated: 11/12/2023

he
(MUNISH GUPTA)
P-515/2005
ADVOCATE
COUNSEL FOR APPELLANT

**THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT
CHANDIGARH**

Appeal No.80 of 2023

M/s Omaxe New Chandigarh Developers Pvt. Ltd. (formerly known as M/s Omaxe Chandigarh Extension Developers Private Limited), through its Authorized Representative/Signatory namely Sh. Vishal Chawla son of Sh. Rajesh Chawla, Omaxe City, 111th, Milestone, Near Badke bala ji Bustand, Jaipur/Ajmer express way, Jaipur, Rajasthan, 302026

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...Appellant

Versus

Prithvi Pal Singh R/o Flat No.303/B, Saket Plaza, Jamal Road, Pulwan, District Patna, Bihar, Pin Code 800001

....Respondents

Present: - Mr. Munish Gupta, Advocate for the appellant.

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)
(Oral)**



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1. This appeal is directed against the Order dated 20.04.2023, passed by the Real Estate Regulatory Authority, Punjab while dealing with the complaint of the present respondent under Section 31 of Real Estate Regulation & Development Act, 2016 (hereinafter known as the Act).
2. It may not be necessary to go into the facts in detail but suffice it to state that the respondent had applied for a residential unit, initially in a joint name but later on he became the sole allottee. The possession was to be given within 42 months of the signing of the buyers agreement dated 27.01.2015 but despite the fact that a payment of Rs.60,26,177/- was made against the total consideration of Rs.76,71,218/- the possession did not materialise within the promised period. The complaint was thus filed with a prayer that the appellant be directed to handover physical possession of the Unit and interest be paid on account of delayed possession as per the Act.
3. The appellant contested the complaint to take up a plea that complaint deserves dismissal on account of non-joinder of the financial institution as a necessary party and that the complainant was entitled to compensation @ Rs.5/- per square feet, per month for delayed possession. But no such grievance was raised by him. It was pleaded that the plea of possession within 42 months was erroneous whereas it had to be given within 48 months after availing a grace period of 6 months. Besides it, the complainant is in default of installments and that interest is payable only till 31.01.2022, on which date the



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completion of the project is due as per the provisions of the RERA Registration and the Declaration made therein.

4. The Authority went into the grievances of the parties and concluded as below:

- i. Respondent is directed to pay interest on the paid amount, to the complainant, as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2% in view of the provisions of Section 18(1) of the Act, read with Rule 16 of the Rules, with effect from 27.01.2019 till the date of this order. This amount shall be paid within two months from the date of this order.
- ii. Respondent is directed to pay interest on the paid amount to the complainant, as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2%, in view of the provisions of Section 18(1) of the Act, read with Rule 16 of the Rules, with effect from the date of the order till the date of final possession, after obtaining occupancy certificate from the competent authority.
- iii. That the interest if any, payable under Section 19(7) of the Act on delayed installment will be payable by the complainant at the same rate at the time of delivery of possession.

5. Aggrieved thereof the present appeal has been filed by the developer who contends that benefit on account of COVID period was not extended to him. Therefore, the order needs to be modified to that extent.

6. Apart from the above no other meaningful argument has been advanced.

7. We have heard the learned counsel for the appellant and are of the opinion that the appeal is without any merit. Firstly no such argument seems to have been raised before the Authority



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claiming any concession on account of the Pandemic. Although we do not notice this plea in the impugned order, but in reply filed before the Authority the appellant has indeed stated so in Para 8 but that too is more of a general statement and no specifics have been pleaded. The agreement is of January 2015, and construing 42 months would bring the promised date of possession to June 2019. COVID Pandemic and restrictions came in March 2020, much after the promised date of possession. So the appellant can hardly claim this benefit justifiably. Be that as it may even if we grant him this concession or a benefit prayed for in related cases we had seen that the Authority had indeed given some benefit on account of the Pandemic under its own instructions and we too have observed in some of the appeals that the benefit of such a period cannot be restricted strictly to operate in water type compartments, and therefore took a liberal interpretation to grant a flexibility to this period by 3 to 4 months. But in the instant case even if we grant this to the appellant it will not make any meaningful difference to the relief granted to the respondent by the Authority for the simple reason that the Authority has fallen in error by treating the period of delivery of possession as 48 months instead of 42 months as envisaged in the agreement. The benefit of 6 months grace period doesn't have to flow automatically as a benefit, rather the bonafides have to be demonstrated by the developer to establish that delay was on account of factors that were beyond his control. We have held so in numerous appeals. If the interpretation as



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placed by the Authority on the grace period in its automatic inclusion to the prescribed period in the agreement is accepted then it does not make sense in prescribing a particular period for delivery of possession as 42 months rather it could simply have been 48 months.

8. Therefore, this benefit of 6 months has been unduly given to the appellant and if we look at the benefit that could have been given under to him the COVID Pandemic then it more or less evens out and would not require any substantial modification in the order of the Authority which while granting the relief has strictly adhered to the provisions of the Act and the facts of the case. To claim any benefit the developer has to show that delay is for reasons beyond his control, or has occurred despite his endeavour to meet the deadlines, and more particularly when he has got almost the entire sale consideration.
9. Taking a holistic view of the entire situation we decline interference particularly when no perversity has been shown in the impugned order. The appeal is dismissed.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S JUDGE (RETD.)
MEMBER (JUDICIAL)

January 8, 2024

SB

Certified To Be True Copy
Shanendra Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15/01/2024