



# Real Estate Regulatory Authority

Government of Himachal Pradesh

Complaint Application

Application No.

CTA0420220002

printed : 31-05-2023 08:47 PM

## Complaint Details

|                        |   |
|------------------------|---|
| Complaint Subject      | <b>Complaint for Delay in Possession by Dheeraj Kumar Mishra Through Counsel.</b>   |
| Facts of the complaint | <p style="text-align: center;"><b><u>Facts of the Case:</u></b></p> <p>Most respectfully showeth:</p> <ol style="list-style-type: none"><li>1. That the complainant and respondent entered into an agreement for sale executed upon date 23<sup>rd</sup> April of 2019 (<b>annexure 1</b>) for a type A flat numbered PWD/JACARANDA-C/109, having super/carpet area 779/439 square feet on 1<sup>st</sup> floor in the group housing project known as Omaxe Parkwood-I situated at Baddi, Distt. Solan (H.P) (Registration no. RERAHPSOP9170007 (hereinafter referred to as The Unit) and an allotment letter has been provided for the same. (<b>annexure 2</b>)</li><li>2. That the total sale consideration decided for the unit was rupees 16,77,255 i.e. Rupees Sixteen Lakh Seventy Seven Thousand Two Hundred Fifty five only/- excluding GST, which was to be paid according to the schedule agreed upon signified in <b>Schedule C-1 and C-2</b> of the Sale agreement.</li><li>3. That the complainant completed 90% of the demand payment lump sum i.e. 15,28,023/- as per schedule and is ready and willing to pay rest of the amount. Statement of the same is provided. (<b>Annexure 3</b>)</li><li>4. That the respondent was to hand over possession of the unit to complainant on or before 20/10/2020, unless there is a delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure").</li><li>5. That similar situation arose due to Covid-19 outbreak and complainant was notified that there was extension in date of possession and the possession would be delivered in April 2021 on email dated 09.11.2020.</li><li>6. That the complainant and respondent corresponded telephonically and through email dkncsbaddi@gmail.com and customerrelations_chandigarh@omaxe.com respectively. (<b>annexure 4</b>)</li><li>7. That when the complainant did not receive possession by April 2021 despite normalcy of pandemic situation, Complainant contacted respondent to receive clarity and further action by respondent. To which respondent replied via email dated 12.04.2021 that delay in offering possession should be adjusted/compensated as per the terms and conditions of the agreement at the time of offer of possession. However, respondent provided no further date for possession.</li><li>8. That the complainant upon several occasions contacted respondent including Project Manager Jatin Jain to gain clarity upon the rate of interest for delay, progress of work and date of possession. However, respondent provided no direct response and brushed the pleas of complainant aside by saying that possession would be raised in 2-3 months and delay interest would be as per norms or RERA or would be discussed at the time of possession.</li><li>9. That the complainant would also like to bring in the notice that even after two years of agreement there was little to no progress on the project. Even at present the project remains in unfinished state. It seems like the respondent grabbed the money of complainant and keeps giving false hopes of possession in near future.</li><li>10. That the respondent finally emailed on date August 28<sup>th</sup>, 2021 vaguely extended the date of possession to October 2021 without any apparent reason.</li><li>11. That the complainant kept patience but all vain when there was no delivery of possession yet again and to add to the shock, respondents on email dated February 8th 2022, claimed that since commitment charges of 7000 rupees per month are paid by them (which also remain unpaid from last 2 months) thereby the interest for delay is not applicable. Hence, delaying</li></ol> |

unpaid from last 3 months), thereby the interest for delay is not applicable. Hence, denying liability from paying any interest for delay. Further, respondent made a promise of raising possession by end of March 2022, which is yet to be delivered.

12. That the time is essence of an agreement. The complainant has completely fulfilled his end of agreement by making timely payments, whereas respondent has failed to fulfill his duties and causing undue harassment and misleading complainant by making vain promises and denying interest without any justifiable reason.
13. That the complainant does not intend to withdraw from the project and hence comes under clause 7.6 of agreement titled "compensation of agreement" which states that where the allottee does not intend to withdraw from the project, the promoter shall pay to the allottee **interest at rate** which specified in the rules for every month of delay, till the handing over of possession of said unit.
14. That there has been inordinate delay in finishing the project and delivery of possession on part of respondent and then denying any interest for the violation has put the complainant in a hard position, financially and mentally.
15. That such action of respondent acts as a breach of duty and entitles complainant to be get interest for delay in possession under the agreement and Section 18 of Real Estate (Regulation and Development) Act, 2016.
16. That it would only be appropriate that complainant gets interest for such violations and put in possession of the unit as soon as possible.

Dated: 06-04-2022

Submitted By:

Through Counsel

Complainant

Adv. Reeta (Nalagarh)

### **Verification**

I, DHEERAJ KUMAR MISHRA son OF YAGYESH NARAYAN MISHRA the complainant do hereby verify that the contents of paragraph 1 to 16 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Place: BADDI

Date: 06.04.2022

Signature of the complainant.

### **Prayers/Relief Sought**

It is most humbly prayed that complainant has invested his hard earned savings in purchase of this unit and such unreasonable delay and lax attitude on the part of respondent must be corrected.

Hence,

a) This Hon'ble Authority may kindly be pleased to hold the non-applicant / respondent, guilty for delay in execution of the project and for the period of delay, a suitable **interest for delay** may kindly be awarded, in favour of the Applicant and against the non-applicant / respondent.

b) That this Hon'ble Authority further may kindly be pleased to direct the non-applicant / respondent.

b) That the Hon'ble Authority may also be pleased to direct the respondent to complete the work and **handover the possession** of the property agreed to vide Agreement

c) That this Hon'ble Authority may also be pleased to direct the Cost of complaint to be paid by respondent.

And any other relief that the authority deems fit in light of justice, equity and fair play.

Reliefs Sought

**1. Delivery of Possession to the complainant. 2. Interest for Delay in Possession. 3. Cost of Complaint Any other relief that the authority deems fit in the light of Justice, equity, and Fair play**

















## Complainant Details

|    | Personal Info   | Contact Details                    | Address  | Notice Address   |
|----|---|------------------------------------|--|--|
| 1. | DHEERAJ KUMAR<br>MISHRA<br>Father : <b>Sh. YAGYESH<br/>NARAYAN MISHRA</b><br>Type : <b>Allottee</b> | 9218673000<br>dkncsbaddi@gmail.com | c/o S.A KHAN, H.N.# 32,,<br>PHASE 1, HOUSING BOARD,<br>BADDI, Solan, Himachal<br>Pradesh, 173205 | c/o S.A KHAN, H.N.# 32,,<br>PHASE 1, HOUSING BOARD,<br>BADDI, Solan, Himachal<br>Pradesh, 173205 |

## Respondent Details

|    | Personal Info   | Contact Details                                      | Address  |
|----|---|--|--|
| 1. | OMAXE LIMITED<br>Type : <b>Project</b><br>Category : <b>Individual</b><br>RERA Reg No : <b>RERAHPSOP9170007</b> | 8054002866<br>customerrelations_chandigarh@omaxe.com | Shop no. 19-B, FIRST FLOOR,,<br>OMAXE CELEBRATION MALL,<br>SOHNA ROAD, Gurgaon,<br>Haryana, 122018 |

**Documents relied upon by the complainant and referred to in the complaint**

|    |                      |   |
|----|----------------------|---|
| 1. | ANNEXURE - 1         |   |
| 2. | ANNEXURE-2           |   |
| 3. | ANNEXURE - 3         |   |
| 4. | ANNEXURE 4           |   |
| 5. | VAKALATNAMA          |   |
| 6. | Form M               |   |
| 7. | Facts of the Case    |   |
| 8. | Prayer/Relief Sought |   |

**Other Documents as annexed along with the complaint** No Records to Display

## Declaration

### Jurisdiction of the Authority

I **DHEERAJ KUMAR MISHRA** declare that the subject matter of the claim falls within the jurisdiction of the authority.

### Complaint not pending with any other Court

Whether this Complaint is pending with any other court, etc.? : **No**

I **DHEERAJ KUMAR MISHRA** declare that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal(s).

### Declaration and Verification

I **DHEERAJ KUMAR MISHRA**, S/O **Sh. YAGYESH NARAYAN MISHRA** do hereby verify that the given details are true to my personal knowledge and belief and the i have not suppressed any material fact(s).

Place : **BADDI**

Date : **06/04/2022**

**Registration Fee**

Fee Amount

**₹ 500**

Payment Status :  **Payment Received**

Payment Mode : **Online**

Transaction No. : **HPR060420220001**

Transaction Date : **06/04/2022 11:58 AM**

Bank Details : **SBIN~209611668018**