

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

RERA/GC No.0280 of 2023

Date of Institution: 09.08.2023

Date of Decision: 23.10.2024

1. Babita Katoch
2. Sukhbir Chand Katoch

Both residents of Village Gadiara (Khaira Road), P.O. Bhawarna,  
Tehsil Palampur, Gadiara, Kangra, Himachal Pradesh-176083

... Complainants

Vs

M/s Omaxe Chandigarh Extension Developments Pvt. Ltd., 10, LSC,  
Kalkaji, New Delhi 110019

.... Respondent

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

Present: Shri Mohd. Sartaj Khan, Advocate for the complainants  
Shri Arjun Sharma, Advocate for the respondent

**ORDER**

This complaint 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 Rules of 2017) has been filed by the complainants in  
their personal capacity on 09.08.2023 for issuance of directions to  
the respondent to pay interest for the period of delay till the date  
of handing over actual legal possession after obtaining Occupancy  
Certificate/ Completion Certificate in respect of the Flat  
No.TLC/CASPEAN-E/TWELFTH-A/12A03 having super area/carpet


area measuring aprox.1850 sq. feet in the project namely "THE LAKE" (Registration No. PBRERA-SAS80-PR0040) being developed by the respondent.

2. The brief facts of the case are that the complainants were allotted Flat No. TLC/CASPEAN-E/TWELFTH-A/12A03 having Super Area/Carpet Area measuring approx. 1850 Sq. Ft./1220 Sq. Ft. in the project namely "THE LAKE", situated at OMAXE New Chandigarh. It is submitted that Buyer's Agreement was entered into between the complainants and the respondent on 18.05.2019, for a total sale price of Rs.76,41,416/- excluding GST. It is further submitted that the complainants paid Rs.71,80,260/- which is more than 95% of the total cost and only the pending amount was to be paid at the time of offer of possession. As per clause 7 (7.1) of the Buyer's Agreement dated 18.05.2019, possession of the flat was to be delivered on or before 31.07.2021. However, the respondent did not offer possession till date and the project is nowhere near completion. It is further alleged that the respondent has not paid any interest for the period of delay in handing over possession till date. It is further submitted that the complainants visited and contacted the respondent repeatedly but possession of the flat has still not been handed over to them. It is further alleged that the respondent has violated various Sections of the Act of 2016. Hence this complaint seeking interest for the period of delay in handing over possession of the flat after obtaining Occupancy Certificate/Completion Certificate from Competent Authority.

3. Upon notice, respondent appeared through learned Counsel Shri Arjun Sharma, Advocate and submitted his reply on 22.11.2023 The learned Counsel for the respondent while

introducing the respondent company, has taken various preliminary objections to the effect that the complaint is not maintainable and the relief sought by the complainants appeared to be on misconceived and erroneous basis but admitted the allotment of above said unit to the complainants. It is further contended that the complainants have misled this Authority by saying that possession was to be delivered on 31.07.2021 and also reproduced Clause 7.1 of the Buyer's Agreement dated 18.05.2019 which is not being reproduced here for the sake of brevity. It is further contended that on request of respondent this Authority has already extended the completion period of above stated project upto 31.12.2023 thus there is no delay and therefore the present complaint is pre-mature. The learned Counsel for the respondent further stated that due to pandemic of Covid-19, this Authority vide order dated 28.10.2020 extended the period of all real estate projects by six months. It is further stated that as per Clause 33 of the Buyer's Agreement, it is clearly mentioned therein that if there is any dispute between the parties the same shall be referred to the Adjudicating Officer appointed under the Act or through process of Arbitration at the joint option of the parties. It is further stressed that if there is any dispute that shall be adjudicated upon as per the terms and conditions of the abovementioned agreement. The learned Counsel for the respondent further added that the agreed terms of the agreement are binding upon both the parties and has cited judicial pronouncements of the Hon'ble Supreme Court in the matters of i) "*Secretary, Bhubaneswar Development Authority Versus Susanta Kumar Misra*", [V (2009) SLT, 242]; "*PUDA (Chief Administrator and Another Versus Mr. Shabnam Virk*",

II (2006) CPJ 1 (SC); and "*Bharati Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd.*", II (1996) CPJ 25 (SC) wherein it has been held that the parties are bound by the terms and conditions of the agreement entered into between them. It is further contended by the respondent that the said flat was allotted under the 'construction linked plan' and it is a matter of record that the complainants have not fulfilled their obligations, have not paid the installments on time, and substantial amount is pending against them due to which respondent suffered losses. The learned Counsel for the respondent has also referred Section 19(6) of the Act of 2016 whereby it is the responsibility of allottee to make payment as specified in the agreement, as such the complainants cannot raise the issue of delay in possession. It is further submitted that in order to complete the project the respondent has incurred hundred crores of rupees.



4. On merits, the learned Counsel for the respondent has reiterated the contents of the above said preliminary submissions and again stressed upon Clauses 7.1 regarding date of delivery of possession and Clause 33 for settling of the dispute through the process of arbitration. It is the prayer of the respondent that the complaint be dismissed with exemplary costs.

5. The learned Counsel for the complainants filed his rejoinder through which controverted the claim of the respondent and also reiterated the contents of his complaint.

6. In the course of hearing, the learned Counsel for the complainants stated that as per Buyer's Agreement dated 18.05.2019, possession of the flat was to be delivered on

31.07.2021, but till date flat has not been handed over to them despite paying of 95% of the cost of the unit by the complainants to the respondent and the balance payment was to be made on receipt of offer of possession. The learned Counsel for the complainants further stressed that till date the respondent has not paid the interest for the period of delay in giving possession, so the complainants are entitled to the interest in view of provisions of Section 18(1) of the Act of 2016.

7. On the other hand, the learned Counsel for the respondent while admitting the allotment of the flat to the complainants and entering into a buyer's agreement dated 18.05.2019, has argued that there is substantial sum due against the complainants. It was a 'construction linked plan' and delay in releasing payment and pandemic of Covid-19 has effected the construction of the project. He has also referred Clause 33 of the Buyer's agreement whereby if there is any dispute that shall be referred to the arbitrator.

8. No other issue has been addressed by the learned Counsel for the respondent during the course of his arguments.

9. The undersigned has considered the contentions of the learned Counsels for the parties and also perused the record of this complaint.

10. Perusal of the Buyer's Agreement dated 18.05.2019 entered into between the complainants and respondent clearly established on record that as per Clause 7.1 of the said agreement the possession of the flat in question was to be delivered to the complainants on or before 31.07.2021. The demand of complainants for possession of the unit is still not fulfilled by the

respondent. Thus, delay is apparent on record. The learned Counsel for the respondent has tried to express its bona fide and laid stress on the pandemic of Covid-19, and stated that vide order dated 28.10.2020 this Authority has extended the period of all real estate projects by six months, thus it could not be said that there has been any delay on the part of the respondent only.

11. It is noted that the Hon'ble Real Estate Appellate Tribunal, Punjab in Appeal Nos. 100 of 2021 and 104 of 2021 titled "*M/s Hero Realty Private Limited Vs. Arun Premdhar Dubey*" and "*M/s Hero Realty Private Limited Vs. Nitin Paragal*" has held that the benefit of a plea of '*force majeure*' on account of epidemic has to be interpreted more beneficially. The relevant paras are reproduced below:

*"9. The situation emerging from Covid epidemic was unique and unknown to humanity. It was fluid as is evidence from the response of the authorities resulting in repeated revisions and overhauling of decisions frequently. It is undeniable that the migrant labour was affected in a huge way, when reverse migration took place on a drastic scale. It is also common knowledge that this unorganized labour sector on which the reality sector depends wholly or substantially did not recover fully even when relaxations were granted by the authorities in human and vehicular movement.*

*10. It is for this reason, we are of the opinion that the benefit of a plea of force majeure on account of the epidemic has to be interpreted more beneficially, to take into consideration the uncertainties and vagaries of a fluctuating labour force at that point of time depriving the real estate sector driven completely by this unorganized labour segment into throes of accumulated losses, resulting from incomplete projects the next date of hearing unsold inventory.*

11. *Therefore, since a complete lockdown was imposed in March, 2020 and with no assigned verifiable point of total reversal in movement of labour, we are of the opinion that a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed.*

12. *We are oblivious to the fact that the benefit of 4 to 5 months as deduced by us is based on discretion and some amount of guess work, which is inevitable for the reasons, we have mentioned in the foregoing paragraphs about the resultant situation from the spread of epidemic. Therefore, the liability fastened upon the developer under clause 8(i) shall now stand reduced by four months in calculating the period.*

13. *Therefore, the relief under clause 8(i) shall accordingly stand reduced by four months..."*

12. Thus, the above ratio has been considered by the undersigned.

13. Further, regarding the objection raised by the learned Counsel for the respondent that the complainants had failed to make the payment as per the 'construction linked plan', however, he was unable to point out any delay on the part of the complainants regarding release of payment by them or adduced any evidence in this regard on the file. Thus, this bald assertion of the learned Counsel for the respondent is without any merit.


14. Regarding the another objection raised by the learned Counsel for respondent about the presence of arbitration clause to the effect that any disputes shall be settled amicably by mutual discussion, falling which the same shall be settled through the Adjudicating Officer appointed under the Act or through process of

Arbitration at the joint option of the parties, it is noted that the scope of Section 8 (1) of the Arbitration and Conciliation Act, and its relevance had been considered by the National Consumer Disputes Redressal Commission in its order dated 13.07.2017 in the case of "Aftab Singh Vs. EMAAR MGF Land Ltd. and Anr." In its order the National Commission has held as under in para 47 thereof :

*"...Hence, in view of the binding dictum of the Hon'ble Supreme Court in Ayyaswamy (supra), the matters/ disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which to a large extent, are similar to the disputes falling for resolution under the Consumer Act."*

15. It is a matter of record that the order of the Hon'ble National Commission had been maintained upto the level of the Hon'ble Supreme Court.

16. In view of the judicial pronouncements discussed on pre-pages it is evident that the arguments put forth by the respondent for not providing the possession of the unit on the agreed date, are defenceless and are liable to be rejected.

 17. From the pleadings and arguments of both the parties it is established on record that possession of the flat has not been delivered to the complainants till date. It is also clear that even after payment of substantial portion of consideration the complainants have been waiting for possession of their unit for a long period of time and still there is no commitment on behalf of the respondent as to when the possession would actually be delivered. In view of above discussion, the undersigned is of the considered view that it would be manifestly unfair to the



complainants to make them wait for the relief of interest as the remaining time for handing over possession is yet not known even at this stage. This violation attracts the proviso to Section 18(1) of the Act of 2016.


18. For the sake of convenience, Section 18(1) of the Act of 2016 reads 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,*

***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) The promoter shall compensate the allottees in case*

 19. In view of the above stated provision and on account of non-delivery of possession, the respondent was liable to pay interest for the period of delay in handing over possession of the flat and it is established on record that there is delay on the part of the respondent and it is held accordingly.

20. As a result of the above discussion, this complaint is accordingly accepted. The undersigned is of the considered view that complainants are entitled for the receipt of interest from the

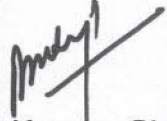
respondent for the period of delay in handing over possession. The respondent is accordingly hereby directed to pay interest from 01.08.2021 (minus four months in view of Appeal No.100 of 2021 (supra)) on the amount of Rs.71,80,260/- at the rate of 11.10% per annum (today's highest MCLR rate of 9.10% plus 2%) as prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 till a offer of possession is made after obtaining the Occupancy Certificate.

21. The respondent is further directed that the payment of interest should be made within the time stipulated under Rule 17 of the Rules of 2017 from the date of issue of the order.

22. Further, the complainants are also bound to pay the outstanding amount, if any, before taking the possession of the unit as per Section 19(10) of the Act of 2016 which reads as under:-

*"(10) 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".*

Announced

  
(Binod Kumar Singh)  
Member, RERA, Punjab