

**BEFORE SHRI MALWINDER SINGH JAGGI, IAS,
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No. GC No.0157 of 2023
Date of Institution : 12.05.2023
Date of Decision:02.07.2024

Karishma Singhal, d/o Shri Rakesh Singhal, resident of House No.41,
Industrial Area, Phase-1, Chandigarh-160002

...Complainant

Versus

M/S ALTUS SPACE BUILDERS PVT. LIMITED, SCO 22 First Floor, Phase 10,
Sahibzada Ajit Singh Nagar (Mohali) PIN Code-160062

....Respondent

Present: Ms. Manisha Maggu, Advocate for the complainant
Shri N.P.Chandel, Advocate for respondent

ORDER

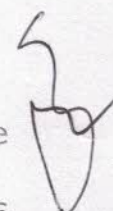
In this complaint, the relief sought by the complainant from the respondent, is for issuance of a direction to the respondent to offer possession of the allotted plot at the earliest and to pay interest for the period of delay in offering possession to the complainant.

2. The brief facts of the case are that the complainant booked a plot measuring 250 square yards by making a payment of Rs.6,18,750/- on 30.01.2013 in the residential project "Muirwood Ecocity" developed by the respondent. An Agreement to Sell was executed on 29.01.2013 between the complainant and M/s Ajeet Associates channel partner with respondent specifying total price of the plot to be Rs.30,33,025/-, payment terms and confirmations of payment already received by the respondent. The possession was to be delivered within 2 years from the date of the agreement to sell i.e by 29.01.2015. The complainant had made total payment of Rs.18,56,750/- against the allotted plot (Key No.1656). The respondent

issued a letter on 15 January, 2014 intimating the complainant about the approval of layout plan of their project etc. The complainant requested the respondent for execution of the builder buyer agreement but no satisfactory reply was given. Hence, this complaint.

3. Upon notice respondent appeared through learned Counsel and submitted its reply taking preliminary objections to the effect that the complainant has misrepresented the facts; complaint is liable to be dismissed for non-joinder of necessary party; Agreement to Sell dated 29.01.2013 was executed with Shri Jatinder Pal Singh, CEO of M/s Ajeet Associates, but no copy of the same was provided to the respondent; complainant failed to pay the balance amount; the respondent admitted that as per Clause 5.3 (a) of the Plot Buyers Agreement executed with the purchasers for plots in the project in question the time frame of handing over possession is twenty four months with grace period of six months; the development work is at final stages, however there is a litigation pending before the Hon'ble High Court of Punjab and Haryana filed vide CWP No.22109 of 2020; there is delay in sanction of layout plan/zoning plans etc. The learned Counsel for the respondent further stated that as per Clause 5.3(c) of the Buyer's Agreement, if no plot is offered the developer may offer the purchaser alternate property or refund with interest at the rate of 9% per annum. Further as per clause 5.1(c) of the Buyer's Agreement the developer is liable to pay charges @ 5/- per sq. yard per month of the area of the plot.

4. On merits, the learned Counsel for the respondent reiterated the contents of his preliminary objections, but added that balance payment was not deposited by the complainant and due to mis-joinder of M/s Ajeet



Associates as respondent never came forward to execute Plot Buyers Agreement and prayed that the complaint be dismissed.

5. A rejoinder was also filed wherein the learned Counsel for the complainant reiterated the contents of his complaint.

6. I have heard the arguments of both the parties and also gone the record of this case.

7. While arguing, the learned Counsel for the respondent reiterated the contents of his reply and on the other hand the learned Counsel for the complainant also reiterated the contents of his complaint, and rejoinder.

8. I have considered the rival contentions.

9. Perusal of the Agreement to Sell dated 29.01.2013 clearly revealed that no date about the delivery of the possession of the plot was mentioned therein by the respondent. However, there is mention about receipt of Rs.15,20,000/- from the second party i.e the complainant in the Agreement to Sell dated 29.01.2013 itself. The complainant has enclosed receipts dated 30.01.2013 of Rs.6,18,750; Rs.10.00 lakhs on 05.06.2015 and Rs.2,38,000/- totaling to Rs.18,56,750.00. All these receipts have been issued by the respondent having name, address and stamp of the respondent upon these receipts. It is noted that the respondent in para no.3 of their reply stated that the Agreement to Sell dated 29.01.2013 was executed between the complainant and Shri Jatinder Pal Singh, CEO of M/s Ajeet Associates. However, there is no whisper in the reply about the acceptance of above stated amount of Rs.18,56,750/- in the reply. In para 4 of the reply, the respondent further stated that '*complainant has failed to pay the balance amount and provide complete details of the payment already made...*'. This averment of the respondent is belied by their own receipts issued as detailed

above. Thus, it is proved on record that the complainant has paid Rs.18,56,750.00 to the respondent who thereafter issued the receipts thereof. Regarding the balance payment, the complainant has conceded that she is ready to pay the remaining balance amount to the respondent.

10. Further, when a query was put to the learned Counsel for the respondent whether they have offered or delivered possession to the complainant?, the answer was in the negative. It is also the case of the complainant that till today possession of the plot has not been handed over despite making payment of Rs.18,56,750/- out of Rs,30,33,025/- the sale consideration of the plot and no dispute was raised by the respondent regarding this payment in their reply or arguments.

11. The respondent/promoter submitted in para 6 of the reply that *"as per the Plot Buyers Agreements executed by the answering respondent/company with the purchasers for plots in the townships "Muirwoods Eco City" New Chandigarh, District SAS Nagar, mentions in Article 5, Clause 5.1 (a) the time frame of handing over the possession i.e within twenty four months or with an extended period of six months from the date of signing of the Buyer's Agreement, subject to timely payments by plot buyers.."*

12. However, no such copy of the Plot Buyers Agreement has been produced or annexed by the respondent in their reply.

13. It is noted that since there is no specific time/date was mentioned in the agreement dated 29.01.2013, based on the judgement of the Hon'ble Supreme Court in **"Fortune Infrastructure (now known as M/s Hicon Infrastructure) and Anr. Vs Trevor Dlima and ors."** (Civil Appeal No(s).3533-3534 of 2017 wherein it was held that only a reasonable period of time could be allowed to a developer to deliver possession. In this case

the Supreme Court had held a period of 3 years to be reasonable. The relevant para 15 of the above judgement is reproduced below:


"15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014...."

14. Considering the above law of land, it is held that the implementation period of this agreement for handing over possession of the plot would be considered as three years from the date of execution of Agreement to Sell dated 29.01.2013. Thus, the date of delivery of possession of the plot as per agreement comes out to be 28.01.2016. Thus, it is established on record that despite lapse of more than 8 years, possession has not been handed over to the complainant.

15. It is also noted that the respondent had been using the amount of Rs.18,56,750/- paid by the complainant, as such the respondent is also liable to pay interest for the period of delay in the delivery of possession as they are getting the benefit of interest accrued upon the said amount and they could not deny the similar benefit to the complainant herein.

16. For the sake of convenience, Section 18(1) of the Act which is reproduced below:

"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:

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 of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

Thus, in view of above provision, the complainant is also entitled for the payment of interest for the period of delay in handing over possession of the plot.

17. In view of the above discussion, this complaint is accepted and the respondent is directed to deliver the possession of the plot to the complainant immediately. Further, the respondent shall pay interest to the complainant on the amount of Rs.18,56,750/- deposited by him, for the period of delay in handing over possession of the plot i.e w.e.f 28.01.2016 till the date of actual delivery of possession of the plot at the rate of **10.95%** per annum (today's highest MCLR rate of **8.95%** plus 2%) prescribed in Rule 16 of the Punjab State the Real Estate (Regulation and Development) Rules, 2017 within one month.

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

Announced


(Malwinder Singh Jaggi), IAS
Real Estate Regulatory Authority
Punjab