

**Before Sh. Balbir Singh, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot No.3,
Block-B, First Floor, Madhya Marg, Sector 18A,
Chandigarh-160018.**

Complaint No. TR AO/21/2019
Old No. (GC.1111 of 2018
Dated of Institution: 05.12.2018
Date of Order:09.07.2020

Paul Inder Sukhija, resident of 203, Tower No.9, Orchard County, Sector 115, Kharar Landran Road, Mohali, District Sahibzada Ajit Singh Nagar, (Mohali), Punjab.

Complainant

Versus

Ansal Lotus Melange Projects Pvt Ltd. SCO NO.183-184, Sector-9C, Chandigarh.

Respondent

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

Present: Shri Ravindepral Singh, Advocate, representative for the complainant.
Shri Rajiv Kumar Bhatia, Advocate, representative for the respondent.

ORDER

1. Paul Inder Sukhija filed this complaint against Ansal Lotus Melange projects Pvt Ltd. alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund and interest etc. as per the provisions of the Act on account of delay in handing over possession of flat No.G03 in Tower-9 of the project namely **Orchard County**. It was averred in the complaint that the complainant booked the said flat

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for his parents at the sale price of Rs.36,49,243/- and paid Rs.34,66,892/- by 22.11.2011. Possession was to be delivered within 24-30 months from the date of agreement i.e. 24.03.2011, but, till date possession had not been delivered to the complainant as the respondent did not want to part with the possession of the said flat as the prices escalated. Even otherwise, the respondent was using the flat in question as a passage from back side. By not delivering the possession of the flat in question to the complainant within the stipulated period, the respondent violated the provisions of the Act. Thus, the complainant was entitled to seek refund of the amount paid alongwith interest, compensation and litigation expenses. Hence, this complaint.

2. In response to notice, respondent appeared and filed written reply on the ground that the complainant had concealed material facts from this bench and willfully misrepresented the facts. The Act was not applicable in the instant case as completion certificate of the project in question had already been issued and possession had already been offered. As such, the respondent had performed their part of the contract long ago, but, the complainant failed to perform his part. The flat was ready and possession would be handed over to the complainant as soon as the remaining 5% of the

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remaining sale price was deposited. The basic amenities to the flat such as road, sewer line, water supply etc had been accomplished and many families were residing in the project. The complainant had other flat No.203, at second floor of the same tower No.9 and the respondent was ready to get the sale deed executed and registered in favour of the complainant subject to payment of due charges. It was further averred that the complainant and his family members were investors and not the end users and now due to downfall in the real estate market, they were unable to get suitable returns and as such the instant complaint. Possession having already been offered to the complainant he could not claim refund at this stage and the complaint was liable to be dismissed.

3. It would be appropriate to mention here that though originally the complainant filed complaint in Form-M vide GC No.1111/2018 and remained pending before the learned Chairperson, but, in view of the order dated 27.02.2020 passed by the Hon'ble Real Estate Appellate Tribunal, Punjab, in appeal bearing No.53 of 2018 titled as SANDEEP MANN VS RERA ETC. the present complaint was transferred to this Bench of the then Adjudicating Officer and was later on converted to Form-N by way of amendment.

Bench

4. Both the respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as already summarized above and the elaboration thereof shall be made in the discussion.
5. I have anxiously considered rival contentions of the learned representatives for the parties.
6. It is not disputed between the parties that flat bearing No.G03 at Tower No.9 in the project namely **Orchard County** was allotted to the complainant in the year 2010. Admittedly, complainant paid 95% of the sale price amounting to Rs.34,66,892/- to the respondent against total sale price of Rs.36,49,243/-.
7. The factual point raised on behalf of the complainant was that the respondent failed to deliver possession of the flat in question within the stipulated period i.e. within 24-30 months from the date of booking and as such the complainant was well within his right to claim refund in this case, but, on the other hand, the contention raised on behalf of the respondent was that the project was complete and its partial completion certificate was obtained way back in the year 2015 and possession had already been offered to the complainant, but, he failed to take the possession by making payment of the remaining 5% of the sale consideration. It is further the contention on behalf of

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the respondent that son of the complainant had already taken possession of flat No.203 in the same tower which is situated on the second floor and residential address of the complainant in this case is also of that flat. In this view of the matter, it can not be said that the ground floor was not ready for delivery of possession when on second floor the son of complainant had already taken possession and moreover complainant is also residing with him in that same flat of the same tower No.9.

8. The contention raised by the complainant that the possession was to be delivered within 24-30 months from the date of booking as per agreement of booking application, but, no document has been brought on record by the complainant to establish the fact that as to when the possession was to be delivered. The only document relied upon between the parties is agreement dated 24.03.2011 and there is clause 10 which relates to the delivery of possession of the unit in question; which states that possession of the said premises is likely to be delivered by the company to the apartment allottee within a reasonable period from the date of this agreement. It means that there was no fixed time frame to deliver the possession of the flat.

9. From the facts and circumstances of the case and the above submissions we find that son of the complainant

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having already received the possession of flat No.203 at second floor of the same tower No.9 then what prevented the complainant to take possession of the flat allotted to him at the ground floor of the same tower after making payment of the remaining five percent of the sale price. In these circumstances, the complainant is precluded from seeking refund of the amount paid by him as he can take possession as has been done by his own son on the second floor of the same tower with whom the complainant at present is residing. It rather shows that plea of the respondent that there being downfall in the real estate prices the complainant was reluctant to take possession appears to be more plausible.

10. In view of above discussions, it is held that the respondent is not entitled to refund, interest, compensation or litigation expenses and the complaint being without merit is hereby dismissed. However, before parting, it is observed that the complainant may take possession of the flat in question on payment of remaining 5% amount of the sale price and other required charges and if the complainant chooses to do so by giving such notice, respondent shall facilitate the handing over of possession and documentation within a period of two months from the said notice. File be

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consigned to record room after making due compliance
of notifying the parties this order well in time.

Dated:09.07.2020



(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority, Punjab.