

**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. ADC 1233/2019
Dated of Institution: 28.06.2019
Date of Order: 29.09.2020

1. Nirmail Singh, House No.48, Village Saketri, District Panchkula, Haryana.
2. Avtar Singh, House No.48, Village Saketri, District Panchkula, Haryana.
3. Sukhwinder Singh, House No.48, Village Saketri, District Panchkula, Haryana.
4. Gurpreet Singh, House No.48, Village Saketri, District Panchkula, Haryana.

Complainants

Versus

1. M/s Ansal Properties and Infrastructure Ltd, SCO 183-184, First Floor, Sector 9, Madhya Marg, Chandigarh.
2. Pranav Ansal, 115 Ansal Bhawan, 16 KG Marg, New Delhi.

Respondents

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

Present: Mr. Harish Goyal, Advocate, representative for the complainants.
Mr. Rajiv K. Bhatia, Advocate, representative for the respondents.
(Through Video Conferencing)

ORDER

1. Nirmail Singh and others (hereinafter called as the complainants) filed this complaint against M/s Ansal Properties and Infrastructure Ltd and another (here-in-after called as the respondents) 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 site for SCO bearing No.50, in the project namely **Ansal Golf Links** Sector 114, Kharar-Landra Road, Mohali. It was averred in the complaint that the complainants were allotted the above mentioned unit pursuant to their application dated 16.10.2008 for a total sale price of Rs.79,69,500/- and allotment letter Annexure C2 was issued in that respect. Though, no date for delivery of possession was mentioned, but, it was orally told to the complainants that the possession of the unit in question would be delivered within 2-3 years. The complainants deposited a sum of Rs.88,45,912/- (including EDC etc) with the respondents by 21.06.2013, as per copies of receipts as Annexure C3 and bank statement as Annexure C4. However, till date possession had not been offered to the complainants as the project was not complete and photographs Annexure C6 depicted the correct picture at the spot. The GMADA issued partial completion certificate to the respondents vide letter No.2039 dated 30.06.2017 qua SCO No.1 to 46A, but, the site of the SCO of the complainants was No.50, regarding which no completion certificate had been obtained by the respondents. As the respondents failed to complete the

Benny

project, the complainants wanted to withdraw from the project due to delay in development. The respondents started demanding maintenance charges without completing the development on the project and offer of possession letter was never received by the complainants and no valid offer of possession could be made without development at the spot. On the basis of above averments, the complainants sought refund of the amount paid by them as mentioned above alongwith interest, litigation expenses and compensation under the Act by way of instituting this complaint.

2. Upon notice, respondents contested the complaint and written reply was filed raising the preliminary objections to the effect that the instant complaint was an abuse of process of law and was liable to be dismissed as the complainants had indulged in concealment of material facts. The Act had no retrospective effect and also had no applicability to the projects in which partial completion certificate had been issued and in this case possession had already been offered to the complainants vide letter dated 06.12.2012 posted on 07.12.2012, Annexure R1, but, the complainants themselves were at fault as they did not obtain the possession of the commercial unit and copy of the partial completion certificate was Annexure

Bornu

R2. The complainants defaulted in making the payments of instalments despite issuance of reminders dated 17.06.2010 and 27.08.2012, show cause notice dated 20.03.2013 and statement of account upto May 2013 are Annexure R3 to R5. All the basic amenities had been provided in the project and more than 400 families were residing therein and 200 sale deeds had been executed. The respondents were ready and willing to execute and get the sale deed registered in favour of the complainant, however, the complainants had not come forward to obtain the possession. In fact the complainants were investors and had invested money to earn profit and now due to downfall in the real estate market the instant complaint had been filed to get the refund, to which, they otherwise were not entitled. On merits, facts as contained in the complaint were denied and prayer for dismissal of complaint had been made.

3. 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.
4. I have anxiously considered rival contentions of the learned representatives for the parties and have gone through the record on the file.

Ponuth

5. It would be appropriate to mention here the admitted facts on the file. Admittedly, the complainants applied for a commercial site for SCO and vide allotment letter Annexure C2, unit No.50 was allotted to them in project namely **Ansal Gold Links**. The total sale price of the unit was fixed as Rs.79,69,500/- against which the complainants claimed to have paid an amount of Rs.88,45,912/- as per receipts/cheque Annexure C3 (colly) and bank statement Annexure C4. It is also an admitted fact that no agreement to sell was executed by the respondents in favour of the complainants and possession of the unit in question had also not been delivered to them.
6. The first point raised by the representative for respondents was that the transaction pertained to the year 2008 and more over the respondents had also obtained partial completion certificate and the Act was not applicable to the instant matter. It may be that that the transaction pertained to the year 2008, but, the present project was ongoing and had not been completed till coming into force of the Act as even the partial completion certificate is dated 30.06.2017, whereas, the Act came into being w.e.f. 01.05.2017; and it is also settled law that the Act would certainly regulate the existing contracts, even though, it is prospective in nature, but, is retroactive also to some

Pomich

extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case titled as ***Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of India and others***, bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it has been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent.

7. The further submission raised on behalf of the respondents was that the complainants themselves were at fault in making the payments of instalments despite issuance of reminders/show cause notices Annexure R3 to R5 and the project was complete and partial completion certificate Annexure R2 on 30.06.2017 had been obtained and offer of possession had also been made vide letter Annexure R1 on 06.12.2012 much prior to filing of this complaint, but, the complainants did not come forward to take possession and now they were not entitled to relief of refund, interest etc.
8. On the other hand, the submission on behalf of the complainants was that they were making payments regularly and in all paid a sum of Rs.88,45,912/- as was apparent from receipts/cheque/bank statement Annexure C3 (colly) and Annexure C4 and no valid offer of possession had ever been made to them by the

Panath

respondents as claimed by them. It was further pointed out that though the allotment letter Annexure C2 was issued, but, no date for delivery of possession was mentioned therein, and even no agreement for sale was ever executed by the respondents in their favour, but, orally it was stated that the possession would be delivered within 2-3 years and as such by doing so the respondents indulged in unfair trade practices and failed to complete the project and deliver possession to the complainants, entitling them to seek refund of the amount paid by them alongwith interest.

9. Admittedly, allotment letter Annexure C2 was issued in respect of allotment of commercial site for SCO No.50 in favour of the complainants, but, no date for delivery of possession has been mentioned therein, which is a very serious default on the part of the respondents for the reasons best known to them and amounts to unfair trade practice, as some tentative reasonable time was to be given in the allotment letter for delivery of possession, which was not done by the respondents. The clock does not stop here as the respondents had not executed any agreement to sell in favour of the complainants despite obtaining more than Rs.80 Lakhs, which was not permissible as per the provisions of the Punjab Apartment and Property Regulation Act 1995 (in short the PAPR Act 1995), then applicable and

Panish

even in accordance with the provisions of the Act, which subsequently became applicable and the respondents were precluded from claiming amount in excess of specified percentage of the total amount of the plot without first entering into plot buyer agreement and, therefore, the respondents were guilty of unfair trade practice. As such, the complainants were entitled to refund of the amount so paid by them to the respondents.

10. As per the provision of Section 6 of PAPR Act 1995 the respondent could not obtain more than 25% of the sale price before entering into agreement of sale. The relevant portion of said section reads as under:-

“Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a building of apartments, all or some of which are to be taken or are taken on ownership basis, or who intends to offer for sale plots in a colony, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty five per cent of the sale price, enter into a written agreement for sale with each of such persons who are to take or have taken such apartments, or plots, as the case may be, and the agreement shall be in the prescribed form together with prescribed

Panath

documents and shall be registered under the Registration Act, 1908".

11.As per the provisions of Section 13(1) of the Act, the respondent could not obtain more than 10% of the cost of apartment, plot or building etc as an advance payment or an application fee from a person without first entering into a written agreement for sale with such person and register the said agreement for sale under any law for the time being in force.

12.In view of above discussion, according to PAPR Act 1995 and also the Act, the respondent could not have received the huge amount of Rs.88,45,912/- against the total price of Rs.79,69,500 the total sale price of the commercial plot for SCO allotted to the complainants without prior entering into an agreement to sell containing terms and conditions pertaining to the transaction such as total price, payment plan, date of delivery of possession, but, nothing of the sort had been done by the respondents and in the allotment letter Annexure R2 no date for delivery of possession has been mentioned and in this manner, the respondents are thus, guilty of unfair trade practice.

13.As far as the submission raised by the respondents that the project was complete and partial completion certificate R2, dated 30.07.2017 had been issued and the offer of possession had also been vide letter

Pomosh

Annexure R1 dated 06.12.2012, but the complainants themselves did not come forward to take the possession was concerned, the same was also devoid of force, because as per own admission of the respondent, only the partial completion certificate, (and not the completion certificate) had been issued on 30.07.2017 then in such situation how the offer of possession could be made on 06.12.2012, about 4 years and 8 months prior to issuance of the partial completion certificate which even did not pertain to the unit No.5 allotted to the complainants. In such circumstances, how a valid and legal offer of possession could be made mid-way without completion of the project. Not only this, as far as the partial completion certificate Annexure R2 was concerned, it was the definite stand of the complainants that the same pertained to plots No.1 to 46A and not to the plot No.50 which had been allotted to them and this version of the complainants could not be denied or disputed by the respondents at any stage and respondents also could not connect as to which particular portion/parcel of the project the same relates. As such the respondents could not get any benefit out of the partial completion certificate Annexure R2. Further, no completion certificate pertaining to plot No.50 has been brought on the record. In such circumstances, it is held that no valid

Parag

offer could be said to have been made as claimed by the respondents and the respondents have failed to prove by any supporting documents as to which portion of the project the partial completion certificate relates.

14. As far as the contention of the respondents that the complainants defaulted in making payments despite issuance of reminders and ultimately a final show cause notice vide Annexure R4 dated 20.03.2013 was issued is concerned, demand for an amount of Rs.15,17,444/- alongwith interest at the rate of 18% per annum was made from the complainants and Rs.20,00,000/- were paid vide receipt dated 07.06.2013 and cheque dated 19.06.2013 part of Annexure C3 (colly) by the complainants. In these circumstances, it cannot be said that the complainants were to pay any further amount. When the project could not be completed and possession was not delivered to the complainants within reasonable period, they opted to withdraw from the project as they were not supposed to wait for an indefinite period for delivery of possession. Moreover, in case of default on the part of the respondents in delivery of possession within the reasonable period, it was optional for the complainants either to withdraw from the project by seeking refund of the amount paid with interest etc or in the alternative they may continue with the ongoing

Pamela

project and they cannot be forced to take delayed possession as has been held by Hon'ble Supreme Court in civil appeals titled **Pioneer Urban Land and Infrastructure Ltd Vs. Govindan Raghavan** in case titled as **Marvel Omega Builders Pvt Ltd Vs. Shrihari Gokhle**, decided on 30.07.2019.

15. In view of above discussions, it is held that the conduct of the respondents in not mentioning the time period for delivery of possession in the allotment letter, then not entering into any agreement to sell despite having received huge amount from the complainants and further not delivering the possession within reasonable time, would amount to unfair trade practice and as such, this case is squarely covered within the mischief of Section 18 of the Act which runs as under:-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, apartment 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, apartment, 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

Bansh

delay, till the handing over of the possession, at such rate as may be prescribed.

(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 there under 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."

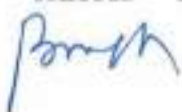
16. In view of the above provisions of the Act, the respondents were duty bound to offer the possession of the apartment in question and on account of non-delivery of possession despite having received the due instalments, the respondents were liable to refund the amount of Rs.88,45,912/- paid by the complainants to the respondents.

17. The next question which arises for consideration is as to whether the complainants were entitled to any interest on the amount paid by them to the respondents or not. The fact of the matter remains that the respondents had been using the amount so paid by the complainants to it since respective payments, as such, the respondents was liable to refund the above said amount alongwith interest to the complainants because once the amount was deposited with the promoter and he was getting benefit of interest accrued

Bomth

upon said amount, he could not deny the similar benefit to the buyer. As such, to conclude with, I am of the view that the complainants are entitled the return of principal amount of Rs.88,45,912/- along with interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate as on this date plus 2% from the respective dates of payments by the complainants till realization. Accordingly, the respondents is directed to return the amount of Rs.88,45,912/- along with simple interest at the State Bank of India highest marginal cost of lending rate as on this date plus 2% from the respective dates of payments by the complainants till realization.

18. Since the complainants could not get possession of the commercial plot/site for SCO No.50 allotted to them and had to seek the remedy under the existing law and for that obviously they had to suffer mental agony and had to incur expenses to pursue the claim by way of engaging a representative. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land Acquisition Act etc etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the



quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged in view of the long delay and as such, I am of the considered view that the complainants were held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

19. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

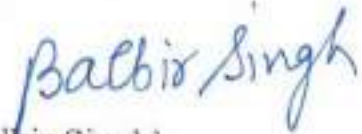
| | | |
|----|---|---|
| 1. | Principal amount | Rs.88,45,912/- |
| 2. | Simple interest | At the SBI highest marginal cost of lending rate as on this date plus 2% on the principal amount from the date of respective payments till realization |
| 3. | On account of mental agony and litigation expenses | Rs.1,25,000/- |

The respondents are directed to pay the above said amount to the complainants within sixty days from the date of this order. In case, any amount has already been received by the complainants from the respondents in this

Pamsh

matter on account of delay in delivery of possession shall stand adjusted against the above said due amount. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:29.09.2020



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