

**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 AdC No.1772/2020
Date of Order: 06.05.2021

1. Samir Grover, }
 2. Chetan Grover} 49 Ashoka Avenue, Sainik Farms,
South Delhi, Delhi, Pin Code 110062.
-Complainants

Versus

Gupta Builders and Promoters Private Limited, SCO No.196-197, Ground Floor, Sector 34A, Chandigarh, Pin Code 160022.

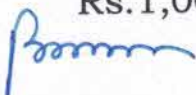
Respondent

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

Present: Shri Luv Malhotra, Advocate, representative for complainants.
Mr. Mohit Kapur, Advocate, representative for the respondent.

ORDER

1. Samir Grover and Chetan Grover, complainants filed this complaint against Gupta Builders and Promoters Pvt Ltd, respondent, alongwith documents seeking refund and interest etc. as per the provisions of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) on the ground that they booked apartment No.401 on 4th floor, type 4 BHK + SR in tower Block A (Universe) **Athens-II** having super area 2319 square feet for a total sale price of Rs.1,00,89,100/- and paid an amount of



Rs.50,00,888/- on different dates. Out of above amount, the complainants paid an amount of Rs.25,00,888/- being 25% of the sale price upto 22.03.2019, but, the respondent executed the agreement for sale on 30.04.2019 and thereby violated the provisions of Section 13 of the Real Estate (Regulation and Development) Act 2016 as not more than 10% of the price could be obtained before first entering into agreement. Another amount of Rs.25,00,000/- was paid upto February, 2020 and possession was offered to be handed over to the complainant within 24 months, but, the respondent mentioned 36 months in the agreement. On their visit from Delhi to Zirakpur, the complainants were shocked to see that there was no development at the site and they were left with no other alternative, but, to move for cancellation of the flat application Annexure C4 as even the officials and executives as well as the respondents admitted that the pace of the development was very slow. The respondent promised to refund the amount alongwith interest at the rate of 12% per annum, but, kept on delaying. In these circumstances, complainants have suffered financially, mentally and physically due to the unprofessional, illegal and unethical behavior of the respondent. The repeated requests made by the

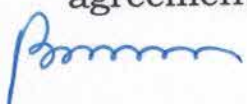


complainant went unheeded forcing the complainants to file the instant complaint.

2. In reply to the complaint, the respondent stated that the complaint had been filed on vague, false and fictitious grounds, but, the receipt of the amount paid by the complainants and booking of the flat was admitted. It was further stated that the time for completion of the work of the project as per the RERA Authority granted to the respondent was December, 2022 and by that time the respondent was duty bound to hand over the possession of the flat in question to the complainants. The construction work of the project was now going on full swing and it would be completed by December, 2022 and the complainants would get the possession within time. Prayer for dismissal of the complaint was made. The complainants filed rejoinder to the reply wherein the averments as contained in the written reply were denied and those of the complaint were reiterated.
3. The violations and contraventions as contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was proceeded for further inquiry.
4. I have heard the representatives for parties and have gone through the record on the file.



5. The representative for the respondent at the very outset submitted that the complaint was pre-mature and was not maintainable at this stage because as per Clause 7(1) of the agreement to sell dated 30.04.2019, the possession of the flat in question was to be delivered to the complainants within 36 months of the date of execution of the agreement i.e. by 29.04.2022 and as per the time given by the RERA Authority for completion of the project, the respondent had to complete the same by December, 2022 and as such, no cause of action accrued to the complainant to file the instant complaint and the same was liable to be dismissed.
6. On the other hand, the representative for complainants submitted that the complainants paid huge amounts to the respondent, but, when on visiting the spot, they found that there was no development in construction of the project, they sought the cancellation of the flat vide application dated 22.07.2020 Annexure C4 as advised by the officials and executives of the respondent and as such, the complaint was duly maintainable.
7. I have considered the above respective submissions made by both sides and in the light thereof confine my observations in respect of maintainability of complaint without touching the merits of the main complaint. The agreement to sell was executed between the parties on



30.04.2019 Annexure C2 and the adjudication has to be made on the basis of terms and conditions enshrined therein. The sale price, mode of payment, delivery of possession etc. have been mentioned in the agreement. As far as the delivery of possession of the flat in this case is concerned, Clause 7 deals with possession of the apartment. The relevant portion of Clause 7(1) regarding schedule for possession of the said apartment reads as under:-

*“The promoter agrees and understands that timely delivery of possession of the apartment is the essence of the agreement. The promoter, based on the approved plans and specifications, **assures to hand over possession of the apartment on or before 36 months from the date of the present agreement**, unless there is 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.”*

8. The perusal of clause 7(1) of the agreement shows that the possession of the apartment was to be delivered within 36 months from the date of the agreement. The date of agreement is 30.04.2019 and on that basis the stipulated date comes as 29.04.2022 by which the respondent was required to deliver the possession. The instant complaint was filed by the complainant on 13.10.2020, which is

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certainly pre-mature and not maintainable at this stage. Hence, the same is hereby dismissed being not maintainable. However, before parting, it is observed that the complainants shall have the liberty to institute fresh complaint on the same cause of action at appropriate stage to redress their grievance if any. A copy of this order be sent to both the parties free of costs under Rules and file be consigned to record room after due compilation.

Dated:06.05.2021



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