

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA MARG,
CHANDIGARH.**

Complaint No.ADC1389/2019 UR
Dated of Decision: 18.06.2021

Achal Kumar s/o Sh. Randhir Singh r/o B4 104, Parbhat Cinema Street,
Barnala

.....Complainant

Versus

1. Punjab Urban Development Authority, Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab.
2. Estate Officer, Urban Estate, Patiala, Pin Code : 147002.

.....Respondent

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

Present: Shri Ashok Gupta, Advocate, representative for the complainant
Shri Bhupinder Singh, Advocate, representative for respondents

ORDER

1. Mr. Achal Kumar filed this complaint against Punjab Urban Development Authority(PUDA), SAS Nagar Mohali and Estate Officer, Urban Estate, Patiala alleging violation of Section 14(3) read with Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeking refund, interest and compensation etc. As per the case of the complainant, the PUDA authorities decided to develop the land for commercial use and prepared a zoning plan for the land having an area 1.18 acres equivalent to 5694 Sq yards; that out of the said area 16.800.12 Sq. ft. was decided to be developed as shop-cum-office and auction was held on 27.02.2015; that the entire project comprised of only 3 points of entry/exit connecting the said site, with the main road, which had been shown as point

Borrrrry

A to C in the site plan; that the complainant being the highest bidder was allotted the SCO No.10-C, measuring 266.66 sq. yards, Old Tehsil Complex, Barnala on the terms and conditions prescribed in the letter of allotment dated 08.5.2015 (Annexure A-1) and price of the commercial site in question was Rs.2,27,72,764/-. An amount of Rs.45,54,553/- which had already paid by the complainant was adjusted towards initial payment of 20% of the site in question and balance sale consideration to the tune of Rs.1,82,18,211/- could be either paid in lumpsum with 10% rebate on the balance 80% amount within 60 days of issue of allotment letter or in 5 yearly equated installments @ 12% per annum as per schedule given below:-

Installment Number	Due date	Principal Amount	Interest	Total amount payable
--	27.8.2015	Moratorium Period	10,93,092.65	10,93,092.65
--	27.2.2016	-do-	10,93,092.65	10,93,092.65
1st	27.2.2017	36,43,642.20	21,86,185.30	58,29,827.50
2nd	27.2.2018	36,43,642.20	17,43,948.30	53,92,590.50
3 rd	27.2.2019	36,43,642.20	13,11,711/-	49,55,353.20
4th	27.2.2020	36,43,642.20	8,74,474/-	45,18,116.20
5 th	27.2.2021	36,43,642.20	4,37,237/-	40,80,879.20
	Total	1.82,18,211/-	87,44,740.90	2,69,62,951.90

That the Municipal Council, Barnala illegally started claiming its rights over entry/exist as shown at point C in the zoning plan and decided to put on auction the site at point C by publishing public notice dated 11.9.2015 (Annexure A2); that the complainant made representation to the Deputy Commissioner, Barnala for stopping the said auction (Annexure A3); that the Municipal Council, Barnala did not stop the said auction and raised a demand of Rs.74.25 lakhs with regard to point meant for entry exist at point B shown in the site plan vide letter dated 16.02.2016 and threatened to auction

Barnala

the same in case of non deposit of amount; that respondents auctioned the site at point C and subsequently blocked opening at point B by putting barbed wires; that third entrance was also blocked by dumping city garbage; that thus the respondent no.1 had failed to provide basic and essential facilities like electricity connections and till date there was no light; that current photographs of the site were attached as Annexure A4; that the complainant filed Civil Writ Petition No.14038 of 2016 in the Hon'ble Punjab and Haryana High Court; that in the meeting of departmental authorities held on 16.3.2018, it was resolved that 2 exist points were being provided for commercial complex by removing barbed wire from one point and removing secondary city garbage dump centre from other entrance and placing twin dustbin for convenience of the public and the petition was disposed of with liberty to the petitioners to adopt the remedy available to them under the law for redressal of their grievance vide order dated 22.3.2018(Annexure A5); that the complainant filed a complaint before the RERA Authority which was dismissed vide order dated 14.11.2018 (Annexure A6) on the ground that completion certificate was obtained by respondent on 28.4.2017 before coming into force the RERA Act; that the complainant preferred an appeal before Hon'ble Real Estate Appellate Tribunal, Punjab which was also dismissed as withdrawn with liberty to file fresh complaint for adjudication of violations under Section 14(3) read with Section 31 and 71 of the Punjab State Real Estate (Regulation and Development) Rule, 2017 in form N vide order dated 13.2.2019 (Annexure P7); that the complainant approached the RERA Authority but the case of the complainant was not entertained; that the complainant approached the Hon'ble Punjab and Haryana High Court by way of Civil Writ Petition No.27393 of 2019 which was disposed of with a direction to the RERA Authority to accept the complaint filed by the

Pomman

petitioners in view of the liberty given by the appellate authority and decide the issue of maintainability after passing a speaking order vide order dated 24.9.2019 (Annexure A/8); that the details of payment made by the complainant was annexed as Annexure A9; that the complainant prayed for refund of Rs.51,86,186/- the amount of interest paid by him alongwith interest @ 18% and compensation

2. The complaint was contested by the respondents taking up the objection that the provisions of the Act had been made applicable prospectively i.e. w.e.f. 1.5.2016 and 1.5.2017 and no provision of the Act had been made applicable retrospectively; that the project in question had been completed prior to coming into force of the provisions of the Act and the completion certificate had already been issued on 28.4.2017 (Annexure R1); that the order dated 24.7.2019 passed by the Hon'ble RERA, Punjab Appellate Tribunal in appeal No.49 of 2018 titled Silver City (Main) Resident Welfare Association Vs. State of Punjab and others was pending adjudication before the Hon'ble Punjab and Haryana High Court and as such proceedings of the present complaint were liable to be dropped; that the State of Punjab enacted the Punjab Regional and Town Planning and Development Act, 1995 with intent to develop the land in a planned manner in the State of Punjab and Section 43 of the Act empowered the authority to frame schemes for development of land owned by it or transferred to it by the State Government. Under the provisions of the above Act the Patiala Urban Planning and Development Authority had developed the site of old Tehsil Complex, Barnala and commercial sites were allotted through public auction on 27.02.2015 that the terms and conditions for allotment of sites were detailed prior to auction; that the complainant after verifying the site in question and going through the

Bommy

terms and conditions of allotment purchased the site in open auction; that the issue of passage had already been resolved by the Hon'ble Punjab and Haryana High Court vide order dated 22.3.2018 passed in Civil Writ Petition No.14038 of 2016; that all the basic amenities which were required for construction of building on the site allotted and usage thereof were available on the site and the site had been fully developed and reports of various departments in this regard were annexed as Annexure R/2(Colly); that the complainant on one side was alleging that basic amenities were not available on the site, whereas on the other side, he raised the building on the site and he was using for business purpose; that the complainant was in the habit of filing complaints/cases in various Courts on frivolous grounds to derive unjust benefit; that the issue of interest involved in the present complaint had already been settled in Consumer Complaint No.CC/15/2019 decided on 14.10.2019 filed by one Mr. Sanjeev Kumar who was allottee of SCO No.2 in the same project and the complainant failed to disclose this fact and as such complaint was liable to be dismissed; that the completion certificate had already been issued by the competent authority and the project was not registered with the Hon'ble RERA authority; that there was an arbitration clause to settle the dispute in the allotment letter dated 8.5.2015 (Annexure P-1) and the matter was required to be referred to the Arbitrator for adjudication, under the provisions of Arbitration and Conciliation Act, 1996 and thus the present complaint was not maintainable. Rest of the averments as contained in the complaint were denied and prayer dismissal of complaint was made.

3. Complainant also filed rejoinder controverting the allegations of the written reply filed by the respondent and reiterating the averments of the complaint.



4. That respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as summarized above and the elaboration there of shall be made in the discussion.
5. The main argument advanced by the representative of respondents was that in view of the successive litigation initiated from the complainant side and the decision thereon by the Hon'ble Punjab and Haryana High Court and the concerned authorities the question of maintainability of the present complaint was to be decided before the decision of the present complaint on merits. Further argument was that the provisions of the RERA Act were prospective in operation and moreover the project of the case in hand was already complete before coming into operation of the RERA Act and therefore the present complaint for seeking relief on the basis of violation of provisions of the RERA Act was not maintainable. Counsel for the respondent invited my attention to the completion certificate dated 28.4.2017 (Annexure R1) issued by the competent authority in respect of the project in case in hand.
6. On the other hand argument on behalf of the complainant was that in the litigation initiated from the complainant side before the Hon'ble High Court and the RERA Tribunal, liberty was granted to the complainant for redressal of subsisting grievance before the RERA Authority. Further argument was that in view of the said direction of the Hon'ble High Court and the Hon'ble Tribunal, the present complaint was maintainable for violation of the provisions of the RERA Act as project of the case in hand was on going project at the time of commencement of the RERA Act.
7. It would not be out of place to mention here that it is admitted case of the parties that possession of the respective commercial site as per auction held on 27.2.2015 for the development scheme in respect of Old Tehsil Complex, Barnala was handed over to the respective allottees including the complainant

Barnala

and they after obtaining necessary sanction of the competent authority had raised construction of the SCOs and even the complainant himself placed on record photographs(Annexure A4) indicating the existence of the complete complex with parking etc. Now comes the question of the earlier litigations initiated at the instance of the complainant side, which was decided by Hon'ble Punjab and Haryana High Court vide order dated 22.3.2018, copy of which was placed on record as Annexure A5. Relevant extract of the said judgment is quoted in extenso as under:-

“7. We are of the considered view that as the grievance of the petitioners has been redressed to a considerable extent, no further directions are required in this petition.

8. At this juncture, learned senior counsel appearing for the petitioners contends that the petitioners may be granted liberty to approach the Real Estate Regulatory Authority (RERA) for redressal of their remaining grievances.

9. Consequently, this petition is disposed of with liberty to the petitioners to adopt the remedy available to them under the law for redressal of their subsisting grievances, if any.”

It therefore is apparent that grievance of the present complainant and others had been redressed to a considerable extent, however, liberty was granted to the petitioners to avail the remedy available to them under the law for redressal of their subsisting grievances, if any. Thereafter, the complainant initiated the proceedings of complaint under Section 59 of the RERA Act alleging violation before the RERA authority but the said complaint was dismissed by the Member, RERA, Punjab vide order dated 14.11.2018, copy of which was annexed as Annexure A6. The operative part of the said order is quoted in extenso as under:-

“Heard. From the statement of the Law Officer and representative of the respondent and the copy of completion certificate, it is apparent that the completion certificate in

Bannu

this case was obtained by the respondent on 28.4.2017 i.e. before coming into force of the Real Estate (Regulation and Development) Act, 2016. As such, the project in question does not require registration as it cannot be said to be on going project at the time of coming into force of the Act. Hence, the proceedings under Section 59 of the Act are ordered to be dropped. The papers bne consigned to record room.”

A bare perusal of the order passed by the RERA Authority leaves no manner of doubt that the complaint of the complainant side was dismissed after holding that completion certificate dated 28.4.2014 of the project of the case in hand was obtained before coming into force of the RERA Act and as such the project in question did not require registration as it could not be stated to be an on going project at the time coming into force of the RERA Act. The matter did not rest here and the complainant side filed an appeal before the Hon’ble Real Estate Appellate Tribunal, Punjab to challenge the order dated 14.11.2018 passed by the RERA Authority which was decided by the Hon’ble RERA Tribunal vide its order dated 13.2.2019, copy of which was annexed as Annexure A7. The operative part of the said order is quoted in extenso as under:-

“In view of statement made by the counsel for the appellants, the appeal is dismissed as withdrawn with liberty to file a fresh complaint for adjudication of violations under Section 14(3) read with Sections 31 and 71 of the Act and Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 in form N. The complaint, if, filed shall be decided on merits but while simultaneously considering whether Section 14(3) of the Act requires a project to be registered and if so then whether the authority can direct a promoter to register a project that is incomplete.”

Pommm

A plain reading of the aforesaid order makes it clear that the appeal of the complainant side was dismissed as withdrawn, however, liberty was granted to the complainant side for filing the complaint for adjudication of violations under Section 14(3) read with Sections 31 and 71 of the Act and Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 in form N with the rider regarding the maintainability of the said complaint to be decided by the Adjudicating Authority. Even the matter did not rest here and the complainant side again agitated the matter before the Hon'ble Punjab and Haryana High Court on the ground that the complaint of the complainant side despite direction the Hon'ble RERA Tribunal was not being entertained and the Hon'ble High Court was pleased to pass the order dated 24.9.2019, copy of which was annexed as Annexure A8. The operative part of the said order is reproduced below:-

“Accordingly, keeping in view the facts and circumstances of the case, RERA authority-respondent No.3 is directed to accept the complaint filed by the petitioners in view of the liberty given by the appellate authority vide order dated 13.02.2019 (Annexure P-17) and decide the issue of maintainability after passing a speaking order.”

Apparently the Hon'ble Punjab and Haryana High Court was pleased to direct the filing of the complaint before the concerned authority the RERA in view of order dated 13.2.2019 of the RERA Tribunal and for deciding the issue of maintainability after passing a speaking order. It was thereafter that the present complaint was filed by the complainant alleging violations of the RERA Act. The logical conclusion in view of the aforesaid orders passed by the Hon'ble Punjab and Haryana High Court and the Hon'ble RERA Tribunal would be that question of maintainability

Bommy

of the present complaint is to be decided before taking up the present complaint for adjudication on merits.

Admittedly vide notification dated 26.4.2016 issued by the Central Government, provisions of Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 of the Real Estate (Regulation and Development) Act, 2016 came into force w.e.f. 1.5.2016 while the remaining Sections of the said Act was made applicable with effect from 1.5.2017 vide notification dated 19.4.2017 of the Central Government. As has already been noticed on behalf of the respondent it has been claimed that project of the case in hand was not on going project rather it was already complete and completion certificate dated 28.4.2017(Annexure R1) was issued by the competent authority before coming into operation of the RERA Act. Though on behalf of the complainant it has been agitated that the project of the case in hand was not complete and would fall within the definition of on going project registration of which was required in accordance with the provisions of Section 3 of the RERA Act. Provision of Section 3 of the RERA Act are reproduced as under:-

3. Prior registration of real estate project with Real Estate Regulatory Authority:- (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said



project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

.....”

Provisions of Section of the RERA Act as noticed above leads to only inference that only the projects which were on going after coming into operation of the RERA Act i.e. w.e.f. 1.5.2017 were required to be got registered with the RERA Authority within a period of three months from

Borun

the date of commencement of the said Act. However, Section 3 (b) of the Act creates an exception that where the promoter had received completion certificate for a real estate project prior to commencement of this Act, the registration of the said project would not be required. As noticed above in respect of the project in the case in hand completion certificate dated 28.4.2017 (Annexure R1) was issued by the competent authority on the basis of report of Divisional Engineer (PH) wherein it was stated that development work regarding public health was completed on 8.12.2014; report of Divisional Engineer wherein it was stated that work regarding electricity was completed on 30.6.2016 and the report of the Divisional Engineer (Civil) wherein it was stated that works were completed on 6.2.2015. Copies of the reports were annexed as Annexure R2(Colly). Moreover, even the learned Member of the RERA Authority while passing order dated 14.11.2018 (Annexure A6) was pleased to take into consideration the issuance of completion certificate dated 28.4.2017 issued by the competent authority for dropping of the complaint filed against the respondents under Section 59 of the Act. The appeal filed by the complainant against the said order was dismissed as withdrawn. Issuance of completion certificate dated 28.4.2017 (Annexure R1) by the competent authority in respect of the project in the case in hand establishes the fact that the project of the case in hand was complete on 28.4.2017 before coming into operation of the relevant provisions of the RERA Act i.e. with effect from 1.5.2017 and the necessary conclusion which can be drawn is that the present complaint which has been filed alleging violations of the provisions of the RERA Act is not maintainable because of the project of the case in hand was complete before coming into operation of the relevant provisions of the Act.

Bammam

8. In view of above discussions, the complaint is dismissed being not maintainable. Arguments in this case were concluded on 16.06.2021 and the judgment was reserved which has been pronounced today. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:18.06.2021



(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority