

**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.ADC 1580/2020 UR
Dated of Decision: 18.06.2021

1. Sanjeev Kumar s/o Sh. Gurdas Ram
2. Parshant son of Sh. Sanjeev Kumar
both residents of House No.1282, Street No.2, Gobind Colony, Barnala.

.....Complainants

Versus

1. Patiala Development Authority through its Chief Administrator, PDA Office Complex, Urban Estate Phase 2, Patiala.
2. Estate Officer, Patiala Development Authority, PDA Office Complex, Urban Estate Phase 2, Patiala

.....Respondents

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

Present: Shri Jagtar Singh Dhaliwal, Advocate, representative for the complainants.
Shri Bhupinder Singh, Advocate, representative for respondents

ORDER

1. Mr. Sanjeev Kumar and Mr. Parshant filed this complaint against Patiala Development Authority and the Estate Officer, Patiala Development Authority, PDA Office Complex, Urban Estate Phase 2, Patiala Punjab Urban Development Authority(PUDA), SAS Nagar Mohali under 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 complainants, they purchased SCO No.2 measuring 177.77 sq. yards for a consideration of Rs.1,31,01,649/- in auction for which public notice (Annexure A1) was published in news paper and deposited a



sum of Rs.91,9000/- on the spot vide receipt dated 27.2.2015 (Annexure A2); that letter dated 17.3.2015(Annexure A3) was issued by the respondent no.2 demanding Rs.19,63,363/- to complete 20% amount of the sale consideration which was deposited by the complainants vide receipt dated 27.4.2015 (Annexure P/4); that allotment letter dated 19.5.2015 (Annexure P/5) was issued prescribing the terms and conditions of allotment and payment schedule; that as per allotment letter amount of Rs.26,20,330/- which had already paid by the complainants towards initial payment of 20% of the site in question was adjusted and balance sale consideration to the tune of Rs.1,04,81,319/- 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	6,28,879.10	6,28,879.10
--	27.2.2016	-do-	6,28,879.10	6,28,879.10
1st	27.2.2017	20,96,263.80	12,57,758.20	33,54,022/-
2nd	27.2.2018	20,96,263.80	10,06,207/-	31,02,470.80
3 rd	27.2.2019	20,96,263.80	7,54,655/-	28,50,918.80
4th	27.2.2020	20,96,263.80	5,03,103/-	25,99,366.80
5 th	27.2.2021	20,96,263.80	2,51,552/-	23,47,815.80
	Total	1,04,81,319/-	50,31,033.40	1,55,12,352.40

That the complainants were forced to pay interest of moratorium period amounting to Rs.12,58,000/- which was paid by the complainants vide receipts dated 28.8.2015 and 26.2.2016 (Annexures A6 and A7 respectively); That the complainants had paid remaining 80% amount before the due dates prescribed in the allotment letter vide receipts Annexures A8

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to A18 and as such complainants had paid a total sum of Rs.1,68,21,633/-; that three gates at points A, B and C were shown in the layout plan (Annexure A19) out of which Municipal Council, Barnala auctioned gate at point C to one Ravinder Kumar and encroached the gate at point B which means the title of the land was not clear which was not disclosed by the respondents; that Civil Writ Petition No.14038 of 2016 was filed before the Hon'ble Punjab and Haryana High Court challenging the same wherein gate at point B was opened and the said writ petition was 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, vide order dated 22.3.2018 (Annexure A20) ; that the complainants filed a complaint before the RERA authority which was dismissed as withdrawn with liberty to file fresh one on the same cause of action vide order dated 27.6.2018 (Annexure A21); that complaint filed by the complainants before the Chief Administrator, PDA Patiala for refund of interest of moratorium period was dismissed vide order dated 24.4.2019 (Annexure A24); that completion certificates Annexures A24 and A25 issued on 28.4.2017 were fake as completion certificates were issued to number of PUDA projects on a single date i.e. 28.4.2017 just to avoid effect of RERA provisions in back date; that the said completion certificate was challenged before the Chief Administrator, PDA Patiala through application (Annexure A26) filed by the complainants which was dismissed vide order dated 14.2.2020 (Annexure A27) despite recording statement of the complainants for withdrawal of the same on 18.2.2020; that complainants filed complaint before District Consumer Forum, Barnala for refund of interest of moratorium period which was dismissed vide order dated 14.10.2019 (Annexure A23); that the complainants got transferred the SCO in question

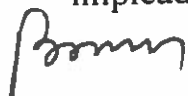
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to Suresh Kumar Singhal, Anita Rani, Ravi Singhal and Smt. Anu Garg which was endorsed by the respondents vide letter dated 28.2.2019 (Annexure A28) and re-allotment letter dated 1.3.2019 (Annexure A29) was issued to them by the respondents; that Suresh Kumar Singhal, Anita Rani, Ravi Singhal and Smt. Anu Garg who are transferees also filed complaint bearing ADC1385/2019 before this Bench for refund of overcharged interest etc. which was actually paid by the complainants and as such the complainants were entitled to recover the said amount and non construction fee etc. which were paid upto 28.2.2019; that respondents had failed to complete the project in time and had delivered the possession of undeveloped site vide letter dated 4.1.2018 (Annexure A31) which was also proved by letter dated 8.3.2019 (Annexure A32) wherein it was clearly mentioned that basic amenities were still pending; that respondents had arbitrarily charged non construction fee and interest in violation of directions issued in CWP No.4108 of 2016 by the Hon'ble Punjab and Haryana High Court and instructions issued by the Addl. Chief Secretary (Development) Punjab; that the complainant prayed for refund of interest, penal interest, non construction fee, compensation and litigation expenses.

2. The complaint was contested by the respondents jointly 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 competition 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 in 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 complainants had got transferred the SCO in question to Sh.Suresh Kumar Singhal and three others and as such the complainants had not vested interest in the site in question and no locus standi to file the present complaint; that the present allottee Sh.Suresh Kumar Singhal and three others had filed complaint no.ADC/1385/2019 on the same cause of action which was pending adjudication before this Bench; that the complainants filed consumer complaint No.CC/15/2019 before the District Consumer Redressal Forum, Barnala on the same cause of action which was dismissed vide order dated 14.10.2019; that the complainants had already availed remedy of appeal under the provisions of the Punjab Regional and Town Planning and Development Act, 1995 before the Appellate Authority which was heard on merits and dismissed vide order dated 11.2.2019 (Annexure R2); that the complaint was liable to be dismissed for non-joinder of necessary party as Punjab Urban Planning and Development Authority which had allotted the site in question had not been impleaded as a party; that the complainants after verifying the site in



question and going through the terms and conditions of allotment purchased the site in open auction; that the interest of moratorium period was to be paid as per terms and conditions mentioned in the allotment letter and moreover it was also held by the District Consumer Forum, Barnala that the complainants were liable to pay the said amount; that the competition certificate was not fake and the same had been issued by the competent authority on the basis of reports issued by the concerned engineers; 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/3(Colly); that the present owners to whom the complainants had sold the site in question had raised the building on the site and was using the same for business purpose; that the complainants were 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 the complainants in respect 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 direction issued in CWP No.4108 of 2016 issued by the Hon'ble Punjab and Haryana High Court and instructions issued by the Addl. Chief Secretary of development were not applicable to the present facts and circumstances of the case; that the allotment of the site in question was governed by provisions of the Punjab Regional and Town Planning Development Act, 1995 and the complainants availed remedy under the said Act by filing two

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appeals, which were dismissed and the complainants instead of filing the revisions, as such the complaint was liable to be dismissed; that there was an arbitration clause to settle the dispute, in the allotment letter 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. 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.
4. The main argument advanced by the representative of respondents was that the provisions of the RERA Act are 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.
5. On the other hand argument on behalf of the complainants was that 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.
6. It would not be out of place to mention here that it is admitted case of the parties that possession of the respective commercial 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 and after obtaining necessary sanction of the competent authority had raised the construction of the SCOs.

7. 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

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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

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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.

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8. Another argument advanced on behalf of the respondent was that the present complainant after remaining unsuccessful before the departmental authorities for redressal of their grievance filed a consumer complaint before the District Consumer Disputes Redressal Forum, Barnala which was finally decided on merits vide order dated 14.10.2019 (Annexure A23) and as such the present complaint was barred by principle of resjudicata.
9. On the other hand argument on behalf of the counsel for the complainant was that the said complaint was decided by the Consumer Forum on the ground of limitation and therefore the same would not operate as resjudicata for the present litigation.
10. A bare perusal of the order dated 14.10.2019 (Annexure A23) passed by the District Consumer Disputes Redressal Forum, Barnala leaves no manner of doubt that the said complaint has not only been decided on the ground of limitation but also on merits. Operative part of the said order is reproduced below:-

“In view of the above facts and circumstances of the case, we dismissed the present complaint of the complainants on two scores first cause of action as disputed pertains to the year 2015 and present complaint filed on 25.2.2019 hence the complaint becomes barred by Section 24-A of Limitation Act. Secondly, the complainant is liable to pay interest as per terms and condition of the allotment of site Ex. OP-1-2/2 which is placed on record. However, no order as to costs or compensation. Copy of this order be supplied to the parties free of costs. The file be consigned to the record after due compliance.”


11. The presents complainant having already agitated their grievance on the same cause of action before the District Consumer Disputes Redressal Forum, Barnala and the said Forum was authorized to adjudicate the



controversy between the parties and the said decision being not only on the ground of limitation but also on merits, therefore, the present complaints are estopped from agitating the same grievance on the same cause of action before this Bench. The only remedy left with the present complainants was to file appeal, if any, against the said decision of the District Consumer Redressal Forum to agitate the same before this Bench by filing the present complaint.

12. 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