

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY
AUTHORITY, PUNJAB**

Complaint No.80 of 2018

Date of Decision 16.10.2018

1. Col. Jagjit Singh Randhawa S/o Shri Harbhajan Singh, R/o 818, Phase-7, Sector 61, Mohali - 160062
2. Mrs. Vandana Randhawa W/o Col. Jagjit Singh Randhawa, R/o 818, Phase-7, Sector 61, Mohali - 160062

....Complainants

Versus

Parkwood Developers Private Limited, 10th Floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi 110019

.... Respondent

Present : Shri Raj Kumar, Advocate for complainants
Shri Suvir Kumar, Advocate for respondent.

ORDER

The present complaint under Section 31 of the Real Estate (Regulation and Development) Act, (hereinafter referred to as the Act) has been filed by the complainants in relation to a residential flat allotted to them in the project named 'Parkwood Glade' developed by the respondent.

2. It is alleged that the complainants had applied for allotment of a flat in the above mentioned project on 07.01.2012, and Flat Buyers Agreement was executed on same day. As per this agreement, the total price of this unit was Rs.39,95,500.00 and the complainants had since paid more than

95% of the due amount. The possession of the flat was to be delivered to the complainants by 31.07.2014 but had not been delivered so far. In fact work at the site was going on at a very slow pace and it was not clear by what time the project would be completed. No offer of possession had been made to the complainants; therefore they wanted to withdraw from the project. The relief claimed is refund of amount paid along with interest thereon along with compensation on various grounds mentioned in para 4.17 of the complaint.

3. Notice of the complaint was served on the respondent who appeared and submitted a reply. While the facts of the agreement and the payments have not been denied, the main contention is that the respondent have been fully committed to the project and have already completed and handed over 4 out of 12 towers planned in the project. Various families are already residing therein. The rest of the project got delayed largely due to circumstances beyond the control of the promoter i.e shortage of sand and gravel in the State of Punjab, and not because of any lack of commitment. It is pointed out that the flat was almost ready and possession would be handed over shortly. It is also claimed that the only relief admissible to the complainants would be in terms of the agreement under which a sum of Rs.5.00 per sq. feet per month was payable for the period of delay. The complainants however could not cancel the allotment and claim refund of the entire amount, it is contended.

4. Arguments were heard on 25.09.2018. During the arguments both sides reiterated the contentions of their written pleadings. Shri Raj Kumar, Advocate, counsel for the

complainants pointed out that payment of a large amount (95%) had been made to the respondent, but possession of the dwelling unit had been delayed inordinately. The last payment was made in March 2017, and more than a year has elapsed since then. However the possession had still not been delivered. The unit was nowhere near completion, and the complainants could not be expected to wait indefinitely for its possession to be handed over. Legal notices had been served upon the respondent but had not even been responded to, leaving no option with the complainants but to file the present complaint. Counsel concluded by stressing that the amount of money deposited by the complainants should be refunded along with interest thereon.

5. In response, Shri Suvir Kumar, Advocate, counsel for the respondent admitted that there had been delay in handing over possession of the dwelling unit, and explained that it was because of circumstances beyond the control of the respondent. He stressed that under the agreement the complainants could only get a compensation of Rs.5.00 per sq. feet. ~~per~~ per month for the period of delay; and if at all interest was to be paid it could only be for the period of delay after the commencement of the Act. The Act was a prospective legislation, and could not affect the transactions or obligations created before its commencement.

6. The rival arguments have been carefully considered. The delay in handing over possession of the dwelling unit is established on the record, and in fact has been admitted by the counsel for the respondent. The main question to be answered is whether the complainants can withdraw from the agreement

because of this unreasonable delay? Respondent's counsel strenuously urged that this could not be done, and the complainants were only entitled to Rs.5.00 per sq. feet for every month of the delay. To my mind, this argument cannot be accepted. Time is of the essence in such contracts, and timely delivery of possession is critical for every person who invests in a real estate project. Under the agreement, possession had to be delivered by 31.07.2014, but has not been completed even till date. It would be a mockery of the law to hold that the complainants cannot withdraw from the transaction but are only entitled to get some compensation from the promoter. At the rate mentioned in the Agreement, this compensation would come only about Rs.8000-8500/- per month, and the respondent cannot be allowed to indefinitely hold on to nearly Rs.40 lakhs of the complainants' money by paying this meagre compensation. The complainants' demand for withdrawal from the project is therefore completely logical and understandable. Further, it has been held by the Hon'ble Bombay High Court that the RERA Act is not retrospective in nature and hence it cannot be held that interest is not to be paid for the period of delay prior to the commencement of the RERA Act.

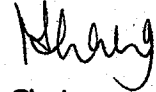
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7. As a result of the above discussion this complaint is accepted, and the respondent is directed to refund the amount paid by the complainants along with interest prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 within a period of two months from the date of receipt of the order. The demand of complainants for additional compensation @ Rs.5.00 per sq. feet per month is not

justified since interest for the period of delay is being allowed, and to allow both would amount to unjust enrichment of the complainants.

8. The complainants have also sought compensation for harassment caused to them in various ways. However, the compensation cannot be allowed by this Authority, and they may chose to pursue this remedy before the Adjudicating Officer, if so advised.

Announced.



Chairperson
Real Estate Regulatory
Authority
Punjab