

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

Complaint No.GC-110 of 2018

Date of institution: 25.07.2018

Date of Decision: 27.11.2018

Naminder Singh son of Shri Ajit Singh, resident of House No.83,
Young Dwellers Society, Sector 49-A, Chandigarh

...Complainant

Versus

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

.... Respondent

Present : Shri Kanwal Nain Singh, Advocate for complainant
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 complainant in relation to a flat allotted to him in Tower A of the project named 'Parkwood Glade' developed by the respondent.

2. It is alleged that the complainant had booked flat no.A-207 with a super built up area of 1260 Sq. feet in the above mentioned project on 07.02.2012, paid Rs.4,53,648/- as the booking amount, and Flat Buyers' Agreement was executed on same day. As per this agreement, the total price of this unit was

Rs.31,77,900/- and the complainant had since paid the entire amount. The possession of the flat was to be delivered to the complainant by 31.08.2014 but had not been delivered so far. The complainant had raised a loan from LIC Housing Finance Ltd for which he is paying interest and instalments, causing undue hardship. The complainant also issued a legal notice dated 11.04.2018 to the respondent, which was delivered on 13.04.2018, seeking physical possession of the flat within 30 days. However, no response had been received; and hence recourse had to be taken to the present complaint.

3. Notice of the complaint was served on the respondent who appeared and submitted a reply. Some preliminary objections about the maintainability of the complaint have been raised. On merits, while the factum of the agreement and the payments have not been denied, the main contention is that there was a ban in the State of Punjab affecting the availability ^{of Mr} building material for a considerable period, due to which the construction activities came to stand still, and the delay in handing over the possession of flat was hence due to *force majeure*. Tower A wherein the flat of the complainant is situated, is at the finishing stages and shall shortly be handed over to him, it is claimed. It is alleged that the grounds on which compensation has been demanded by the complainant are not valid. At the most the complainant is entitled to compensation @ Rs.5.00 per sq. feet per month in view of Clause 20(b) of the Flat-Buyers Agreement dated 07.02.2012 which were paid since August 2015 onwards, is the respondent's contention.

Mr

4. A replication has been filed by the complainant reiterating his stand taken in the complaint, and also claiming that since in the respondent's reply no firm date for handing over possession of the flat had been mentioned, the entire amount deposited by the complainant may instead be refunded along with interest.

5. Arguments were heard on 13.11.2018. Written arguments were also filed by the complainant. During the arguments both sides reiterated the contents of their written pleadings. Shri Kanwal Nain Singh, Advocate counsel for the complainant pointed out that entire payment had been made to the respondent, but possession of the unit had been delayed inordinately. The last payment was made in June 2017, and more than a year had elapsed since then, however the possession had still not been delivered. The unit was nowhere near completion, and the complainant could not be expected to wait indefinitely for its possession to be handed over. A legal notice had been served upon the respondent but had not even been responded to, leaving no option with the complainant but to file the present complaint. Counsel concluded by stressing that the amount of money deposited by the complainant should be refunded along with interest thereon.

6. In response, Shri Suvir Kumar, Advocate counsel for the respondent admitted that there had been delay in handing over possession of the unit, and explained that it was because of circumstances beyond the control of the respondent. He stressed that under the agreement the complainant could only get a compensation of Rs.5.00 per sq. feet 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.

7. The rival arguments have been carefully considered. The preliminary objections raised in the reply can be summarized as under:-

- i. That the averments made by the complainant are baseless, and the complainant has not approached this Authority with clean hands.
- ii. That the relief sought by the complainant is beyond the scope of the buyers' agreement dated 07.02.2012.
- iii. That the complainant has not deposited the total amount of the flat with the respondent.
- iv. That there were complicated questions of law and fact which could be decided only by way of a regular trial in a civil suit and not through summary proceedings.

None of these objections have any substance. The respondent has not submitted any evidence/document to support the objections at serial number (i) and (iii) above. Regarding serial number (ii) I am of the view that the statutory rights of an allottee under the Act cannot be limited by any prior agreement. Finally, in relation to (iv) above it only needs to be noted that the Act and the Rules made thereunder provide that an aggrieved person can file a complaint against a developer, as in the present case; and moreover the jurisdiction of the Civil Courts is specifically barred under Section 79 thereof.

AM

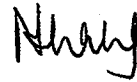
8. On merits of the case, the delay in handing over possession of the unit is established on the record, and in fact has been admitted by the counsel for the respondent. The main question to be answered is whether the complainant can withdraw from the agreement because of this unreasonable delay? Respondent's counsel strenuously urged that this could not be done, and the complainant was only entitled to a compensation of Rs.5.00 per sq. feet for every month of the delay. However, 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 handed over even till date. The offer made, during arguments, by the respondent's counsel to deliver the possession in June 2019 was not acceptable to the complainant. Section 18 of the Act confers discretion upon the allottee to withdraw from the project in case a promoter is unable to give the possession of the apartment within the date specified in the agreement. The complainant's demand for withdrawal from the project is therefore completely logical, understandable, and justifiable. 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.

9. As a result of the above discussion this complaint is accepted, and the respondent is directed to refund the amount paid by the complainant 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 interest will be paid from the date of deposit of funds by the complainant with the respondent, and till the time that the actual refund is made. The respondent would however be allowed to offset the amount that might have been paid to the complainant by way of compensation at the rate of Rs.5.00 per square foot per month.

10. The complainant has also sought compensation for harassment, mental agony and litigation expenses; and sums of Rs.2.50 lakhs and Rs.4.80 lakhs respectively on account of the income tax benefits that would have accrued, and the rent that the complainant would have earned, in case of timely possession. However, such relief cannot be allowed by this Authority, and the complainant may chose to pursue this remedy before the Adjudicating Officer, if so advised.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab