

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

Complaint No.GC-108 of 2018

Date of Decision 18.12.2018

1. Swaran Lata Thukral, w/o Nand Lal Thukral, r/o House No.506, GHS-106, Arushi Apartments, Sector 20, Panchkula, Haryana
2. Parul Kishore, w/o Ajit Kishore, r/o House No.506, GHS-106, Arushi Apartments, Sector 20, Panchkula, Haryana

....Complainants

Versus

Mr. Tarninder Singh, Managing Director, Manohar Infrastructure & Constructions Pvt. Ltd. SCO No,139-141, Sector 17-C, Chandigarh 160017

.... Respondent

Present : Ms. Parul Kishore, complainant no.2 in person  
Shri Arvinder Singh Kohli, on behalf of respondent

**ORDER**

The present complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) has been filed by the complainants in relation to a plot booked in the real estate project named Venetian Spaces at Mohali, developed by the respondent company.

2. It is alleged that the complainants had booked a plot measuring 192 Sq. yards in the above mentioned project on 06.04.2011, and paid Rs.5,50,000.00 as booking amount by way of cheque No.00014 dated 06.04.2011. As per the document

titled 'Expression of Interest' dated 04.04.2011 and the Payment Plan, the project was to be developed and delivered within 18 months. However, since the site was not developed for quite a long time, the complainants decided to demand back the amount deposited long with interest. A letter dated 25.09.2017 was sent by way of registered post asking the respondent to cancel the booking and refund the dues but did <sup>not</sup> elicit any response. Thereafter a legal notice dated 14.11.2017 was also served upon the respondent, but ~~it~~ did not respond to this too. Hence the present complaint seeking following relief had to be filed:-

- i. refund of principal amount;
- ii. interest thereon;
- iii. costs of litigation; and
- iv. cost of mental agony and harassment.

3. Notice of the complaint was served on the respondent. In their reply the contraventions of law that were alleged in the complaint have been denied. The following preliminary objections have been raised in the complaint:-

- i. That the complaint is bad for non-joinder and mis-joinder of parties.
- ii. The complaint has not been filed in accordance with provisions of the Real Estate (Regulation and Development) Act, 2016.
- iii. That the complainants had not approached the Authority with clean hands, and had refused to acknowledge that the respondent had carried out substantial development works at the site.

Further, the complainants had failed to mention that apart from booking amount they had not made other payments to the respondent, and hence defaulted in keeping up their part of the contract.

iv. That complicated question of law and facts were involved in this case which were required to be adjudicated in a regular Civil Court, and not through the summary proceedings envisaged under the Act.

On merits it has been denied that the project was to be developed and delivered within 18 months as alleged, and that the complainants had miserably failed to adhere to the Payment Plan which has been accepted by them, and in fact annexed with their complaint.

4. When the case was taken up for arguments on 04.12.2018 Shri Jaswant Singh, Advocate reiterated the contents of the complaint, and pointed out that though Rs.5.50 lakhs out of the total cost of Rs.27.84 lakhs had been deposited way back in April 2011, as the booking amount for a plot of 192 Sq. yards, no such plot had been delivered to the complainants. The complainants had offered to make payment of the instalments but these were not accepted by the respondent on the ground that the development at the site had not yet been carried out. Finally, after a long wait in September 2017 they had requested that the booking be cancelled, and the money be refunded with interest. However, the respondent had sought to forfeit 20% of the booking amount, and also not pay any interest while refunding the amount. This was unlawful, and could not be allowed, and hence the complaint deserved to succeed. Counsel

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concluded that the amount deposited by the complainants be refunded along with interest @ 18% p.a..

5. Coming to the respondents' contentions it may be noted that their counsel did not raise any arguments in support of the preliminary objections at serial numbers (i), (ii) and (iv) in para 3 above. The preliminary objection at serial number (iii) is linked with the merits of the case, and does not <sup>need to</sup> be taken up separately. On merits, Counsel pointed out that the complainants had not submitted any document in support of their claim for refund of the deposited amount. They had made only one payment in April 2011, and not paid the instalments due after this date. They not only failed to comply with the Payment Plan provided to them, but admittedly had not made any effort to complete the transaction for a long time, between 2011 and 2017. The respondent on their part could not proceed further with the transaction because the complainants did not make due payments, and hence the Buyer's Agreement could not be concluded.

*Alh*

6. I have considered the rival contentions carefully. To my mind this case is an example of both complainant and respondent being in default of their legal obligations. As far as complainants are concerned they had made only one payment in April 2011, and seem to have slept over the matter for the next 6½ years. This is so despite them relying upon the Payment Plan which stipulated that a payment would be made every three months. Not only did they not make any payment, but they have also not produced any record or evidence to show that any effort was made to further the transaction from their end. They have not also produced any evidence to show that the plot was to be

delivered to them within 18 months of the date of booking - there is only a bland assertion to this effect in the complaint, but that has been denied by the respondent. It cannot therefore be said that any certainty that the respondent has delayed deliver of possession, though the lapse of 6 years does point in that direction. Conversely, however, it can be argued that it is because the complainants did not pay their instalments in time that the project was delayed. Investment in a plot cannot be equated to a time deposit in a bank or in any interest-bearing scheme. Rather it is a contractual arrangement in which both parties have their rights and obligations to honour. On the other hand, as far as the default on the part of the respondent is concerned, it is clear that the delay of 6 years has to be dealt to be unreasonable even though there is no evidence to show that the respondent had promised to deliver the possession earlier than this. The respondent has also not produced any evidence to show that efforts they had made to remind the complainants of their obligations to make payment in a timely manner. It is also noteworthy that in the document titled 'Expression of Interest' there is a clause which casts duty on the respondent to make Provisional Allotment after accepting the application and booking amount. This does not seem to have been complied with in the present case. In my opinion, since delivery of possession has been delayed the complainants are within their right to demand that the booking be cancelled, and the transaction annulled.

7. In the circumstances of the case as explained above, this complaint is partly accepted, and it is ordered that entire sum of money deposited by the complainants be refunded to them.

However, claim for payment of interest is declined in view of the fact that the complainants have themselves been in default to some extent. The due amount be refunded to the complainants within 2 months of the date of receipt of this order.

Announced.



Chairperson  
Real Estate Regulatory Authority  
Punjab