

**BEFORE SHRI J. S. KHUSHDIL, MEMBER,
REAL ESTATE REGULATORY AUTHORITY, PUNJAB,
PLOT NO.3, BLOCK-B, FIRST FLOOR, MADHYA MARG,
SECTOR 18, CHANDIGARH**

Complaint No.GC/1115/2018
Date of Institution: 06.12.2018
Dated of Decision: 06.02.2019

Deepak Garg resident of House No.3003, Tribune Society, Sector 50-D,
Chandigarh.

.....Complainant

Versus

ATS Infrabuild Private Limited, Site Office ATS Infrabuild, Private Ltd,
Sector 121 near Verka Milk Planty, Mohali, District Sahibzada Ajit Singh
Nagar (Mohali) Punjab.

.....Respondent

Complaint under Section 31 of the Real Estate (Regulation
and Development) Act 2016 and Rule 36 of Punjab State Real
Estate (Regulation and Development) Rules 2017.

Present: Shri Deepak Garg complainant in person.
Respondent ex-parte vide order dated 28.01.2019

ORDER

Deepak Garg (hereinafter called as the complainant) has filed this
complaint against ATS Infrabuild Private Limited. (hereinafter
called as the respondent) alongwith documents alleging violation of
Section 18 of the Real Estate (Regulation and Development) Act
2016 (herein-after called as the Act) seeking possession of flat
No.7032 in project namely ATS CASA ESPANA, Mohali and for
grant of interest on amount of Rs.85,71,866/- paid by him to the
respondent on account of delay in handing over the possession of the
said flat till date despite of the fact that he has deposited the above

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said amount being 95% of the total sale price with the respondent by way of instalments i.e. Rs.5,00,000/- on 13.04.2017, vide Annexure-B, Rs.6,00,000/- on 02.05.2017 vide Annexure-F, Rs.2,38,360/- on 02.05.2017 vide Annexure-G, Rs.75,280.40 (loan amount) on 04.05.2017 vide Annexure-H and an amount of Rs.91,200/- on 13.10.2017 vide Annexure-I. In addition to this amount, the complainant has also paid an amount of Rs.3,85,734/- on account of service tax. It is further pleaded that the respondent executed buyers agreement on 11.05.2017 and as per its terms and conditions the completion of the project was mentioned as up to December 2017 with a grace period of 03 months, however, the possession of the flat has not so far been delivered to him. As the respondent has violated the terms and condition of the agreement dated 11.05.2017, he has made himself liable to pay interest on the amount paid by him at the rate prescribed under the Act. In the end, a prayer for acceptance of the complaint has been made.

2. Upon notice of this complaint, the respondent did not appear despite of service and as such, it was proceeded against ex parte vide order dated 28.01.2019.

3. I have heard the complainant at length and have perused the documents annexed by him with the pleadings and the additional documents brought on record by him for the purpose of proceeding with the enquiry.

4. The complainant has relied upon allotment letter dated 01.05.2017, agreement to sell dated 11.05.2017 (Annexure-D), tripartite

agreement dated 11.05.2017 (Annexure-E), payment receipt of Rs.5,00,000/- dated 13.04.2017, payment receipt of Rs.6,00,000/- dated 02.05.2017, payment of receipt of Rs.2,38,360 dated 02.05.2017, payment of receipt of Rs.75,28,040/- dated 19.05.2017, certificate regarding TDS of Rs.91,200/- dated 24.10.2017, reminder/demand notice, offer of possession letter dated 09.01.2019 Annexure A, payment plan Annexure-B and copy of mail dated 12.04.2017 Annexure-C.

5. The complainant has made the submission that he booked flat No.7032, at 3rd floor, 7th tower in project namely ATS CASA ESPANA bearing registration No.PBRERA-SAS80-PR0086. The basic price of the flat in question was Rs.91,20,000/- against which he has already paid an amount of Rs.85,71,866 being 95% of the total sale price excluding taxes. It is submitted that no allotment letter was issued to him and only agreement dated 11.05.2017 Annexure-D was executed between the parties vide which the respondent agreed to deliver possession in December 2017, but, possession has not yet been delivered to him within the stipulated time, rather, the respondent has offered paper possession vide letter dated 09.01.2019 Annexure-A. In this way the respondent has committed default in delivering the possession w.e.f. 01.01.2018. The complainant intends to stay in the project and has claimed interest on the amount so deposited by him against proper receipts. It is submitted that the respondent has failed to release the interest on the amount deposited by him despite of demand made by him

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and it is prayed that the interest on the principal amount may be awarded as per Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) i.e. as per the SBI highest marginal rate of interest prevalent in the market on account of delayed period in delivering the possession of the flat in question. The complainant has also invited the attention of this Bench towards written submissions where every point has been elaborately highlighted.

6. As per circulars dated 29.10.2018 and 21.11.2018, the matter pertaining to refund and interest is to be dealt with by the Authority or the Benches headed by its Members and the complaints are to be filed in Form-M and the instant complaint for grant of interest on the principal amount for delay in delivering the possession as such has been filed in form-M.

7. I have considered the submissions made by the complainant and it has transpired from the record that the complainant booked the flat No.7032, 3rd floor, 7th tower of project ATS CASA ESPANA, Mohali, which is registered with this Authority against registration No.PBRERA-SAS80-PR0086. It is a proven fact that the basic sale price of the flat was Rs.91,20,000/- against which the complainant has deposited an amount of Rs.85,71,866/- excluding taxes. The agreement dated 11.05.2017 Annexure-D is available on record vide which the respondent was to deliver possession till December, 2017 as per clause 6.2, but, as per admission as well as letter of offer of possession dated 09.01.2019 vide which the offer of possession only

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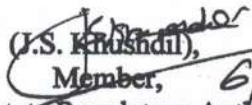
been made on 09.01.2019. The respondent was under contractual obligation to deliver the possession of the flat in question to the complainant till December, 2017. No rebuttal has come on record or no circumstance have been surfaced by the respondent as to what were the reasons on account of which the possession of the flat could not be delivered to the complainant within the stipulated period. From the record, it is also clear that the respondent has not paid/awarded any interest on the amount deposited by the complainant and thereby the respondent has violated the express provisions of Section 18 of the Act.

8. It is settled proposition of law that the promoter has to pay interest to the allottee, whose money has been utilized by him and the project is delayed beyond the contractual agreed period. The promoter enjoying the benefit is bound to pay interest to the allottee. The RERA does not contemplate re-writing of contracts between flat purchaser and the promoter to deprive the allottee to receive the statutory benefits. In this case, paper possession has been delivered vide letter dated 09.01.2019, but, the paper possession is no possession in the eyes of law, as the law recognizes only the physical possession, which has not been delivered so far. As such, the complainant is entitled for the interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% w.e.f. from 01.01.2018 (as the possession of the flat was to be delivered till December, 2017) till the actual possession of the flat is handed over to the

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complainant. There is no evidence with regard to the rate of interest, therefore, it is not possible to calculate the exact amount of interest. However, here I would like to add that the complainant would be entitled for the simple interest at the State Bank of India highest marginal cost of lending rate of interest (simple) plus 2% on principal amount. The respondent is directed to pay the simple interest at the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount of Rs.85,71,866/- w.e.f. 01.01.2018 (as the possession of the flat was to be delivered till December, 2017) till the actual possession of the flat is handed over to the complainant. The complaint is, therefore, partly accepted. A copy of this order be supplied to the complainant and also sent to the respondent. File of complaint be consigned to record room after due compilation.

Dated: 06.02.2019


(J.S. Khandil),
Member, 6/2/2019
Real Estate Regulatory Authority.