

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

NOTE: Corrected
 vide order dated
 8.3.2019

Complaint No./RERA/GC1020/2018

Date of Institution: 08.09.2018

Dated of Decision: 11.02.2019

1023

Member
 8/3/2019

Rattan Chand, resident of House No.1007, Sector 35B, Chandigarh.

.....Complainant

Versus

Bajwa Developers Limited, SCO 17-18, Ludhiana Chandigarh State High Way, Sahibzada Ajit Singh Nagar (Mohali) Punjab, 2nd Address: Sector 1252, Sunny Enclave, Kharar.

.....Respondent

Complaint under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 and Rule 37 of Punjab State Real Estate (Regulation and Development) Rules 2017.

Present: Complainant Rattan Chand in person.
 Shri Manpreet Singh representative for respondent

ORDER

1. Rattan Chand (hereinafter called as the complainant) has filed this complaint against Bajwa Developers Ltd., (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 plot No.929 and in the alternative refund of the amount of Rs.27,50,000/- towards the sale price of the plot paid by complainant side to the respondent alongwith interest on account of delay in handing over the possession of above plot measuring five marlas till date The project under which the plot falls is registered with this authority against registration

S. S. Khushdil
 11/2/2019

No.PBRERA-SAS80-PR0253. Originally, Rakesh Lata, wife of complainant applied for purchase of plot No.1008 measuring five marlas bearing khewat No.5/5, 6,7 and 55/1, khasra No.25/16/12 out of 68 kanals 17 marlas situated at village Harlarpur No.181, Tehsil Kharar and District SAS Nagar, Mohali, Sunny Enclave from the respondent and a sale deed No.3608 was executed and registered in the office of Sub Registrar, Kharar on 16.09.2013. Thereafter, an amended sale deed bearing No.2260 in regard to plot No.929 measuring 0-5 marlas (152.72 sq yards) in lieu of earlier transaction was executed on 10.06.2016 by the respondent in favour of the wife of complainant. The full and final sale consideration was received by the respondent. It is further pleaded that the possession of the plot in question has not so far been delivered to the complainant side despite of the fact that they have already paid an amount of Rs.27,50,000/- to the respondent. In the end a prayer for delivery of possession of plot No.929 has been made and in the alternative refund of the principal amount alongwith interest has been sought.

2. Upon notice, respondent appeared through representative and filed written reply to the complaint stating that sale deed in respect of plot No.929 was executed in favour of Smt. Rakesh Lata wife of present complainant for a total sale consideration of Rs.24,75,000/- on 10.06.2016 and also got registered before the Sub Registrar, Kharar. As per recital made in the said sale deed, possession of plot No.929 had already been delivered to the purchaser. However, it is further pleaded that if at all any problem is with the possession of plot No.929, then, the respondent is ready to settle the matter with the

complainant amicably and are ready to set right the possession of the plot in question.

3. After hearing both the parties, notice under Section 17 read with Section 11 and Section 18 read with Section 11 of the Act was served upon the respondent on 13.12.2018, to which, the respondent pleaded not guilty. The explanation furnished by the respondent was not found satisfactory and it was found that there was a need for further hearing into the complaint.
4. Both the parties were afforded an opportunity to file documents/evidence in support of their respective stand which they have taken in their pleadings and both the parties suffered statements that they do not want to lead any further evidence/document and the evidence already on record may be read.
5. The complainant has relied upon two sale deeds dated 16.09.2013 qua plot No.1008 measuring 0-5 marlas, copy of jamabandi for the year 2010-11, copy of the plan showing the plot numbers of the colony, copy of cheque amounting to Rs.18,57,000/- as loan obtained by Smt. Rakesh Lata as Annexure-A, copy of receipt of advance payment of Rs.1,00,000/- dated 30.04.2013 as Annexure-B, copy of receipt dated 15.05.2013 for a sum of Rs.5,19,000/- as Annexure-C, copy of cheque dated 14.05.2013 in that regard, copy of receipt dated 22.08.2013 for a sum of Rs.1,22,750/- Annexure-D, copy of cheque in that respect dated 22.08.2013, copy of receipt dated 09.09.2013 for a sum of Rs.80,000/- as Annexure-F, receipt dated 28.12.2013 for a sum of Rs.1000/- as Annexure-G, copy of no due certificate qua plot No.1008 dated 16.10.2013, copy of re-issue letter qua plot No.929

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dated 17.05.2016, copy of sale deed dated 10.06.2016 qua plot No.929, receipt for a sum of Rs.300/- in regard to mutation, copy of jamabandi for the year 2015-16, copy of letter of offer of possession dated 09.03.2017 and death certificate of Rakesh Lata dated 15.01.2018.

6. On the other hand, the respondent has not brought on record any document and closed the evidence.
7. I have heard Shri Rattan Chand complainant and Shri Manpreet Singh, representative for the respondent and have gone through the record with their able assistance. The representatives for the parties by and large have addressed their arguments in the light of their respective pleadings.
8. It would be worthwhile to mention here that the plot in question was purchased in the name of Smt. Rakesh Lata wife of present complainant, but, unfortunately she has died in the month of December 2017 as is apparent from the copy of the death certificate and on that account the instant complaint has been filed by the complainant Rattan Chand being widower, (husband) of Rakesh Lata.
9. There is no denial about the registration of the project with this authority to which this complaint relates. The receipt of payment made by the complainant side has also not been denied. The sale deed dated 16.09.2013 qua plot No.1008 and sale deed dated 10.06.2016 in regard to plot No.929 in lieu of earlier plot No.1008 has also not been denied by the respondent. The complainant has deposited an amount of Rs.27,50,000/- as principal amount in instalments towards the cost of plot. Though, two sale deeds have been executed by the

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respondent in favour of Rakesh Lata wife of the present complainant, but, possession of neither of the plot has not been delivered to the complainant side. In the written reply, the respondent has mentioned that it is clearly recited in the sale deed dated 10.06.2016 that the possession of the sold plot has already been delivered to the purchaser. However, it has not been stated that the possession was actually delivered to the complainant side and this fact is further fortified from the next lines mentioned in the written reply, where, the respondent has mentioned, that if at all there is any problem with the possession of the plot No.929, the respondents are ready to settle the matter with the complainant amicably and are ready to set right the possession of the plot sold by virtue of the sale deed. From these averments of the respondent, it is clear that the possession of the plot in question was never handed over to the complainant side. Not only this, during the pendency of the complaint the parties took adjournments for amicable settlement, which further shows that possession of plot is not with the complainant, otherwise, for what purpose the amicable settlement was to arrive at. As such, it is held that the possession of either plot i.e. No.1008 of No.929 has not been delivered to the complainant side. Otherwise also, the sale deeds are qua 0-5 marlas of land and the sale deeds have been got executed from a big chunk of land measuring 68 kanals 17 marlas it would be difficult to deliver the specific possession of the plot to the complainant side by the respondent out of the undivided share and the buyer cannot be kept in uncertainty about the fate of the plot. It is because of this reason that the respondent himself executed two sale

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deed as mentioned above, but, has failed to deliver the possession of the specific plot. In this way, this Bench is of the considered opinion that the possession of specific plot is difficult. As such, it would be in the interest of justice, if the respondent is directed to return the principal amount to the complainant side.

10. It is option of the complainant either to claim her money back or to claim possession or remain in the project or may withdraw from the project. In the instant case, the complainant side has opted for refund of the principal amount and has claimed interest in accordance with the provisions of Section 18 of the Act.

11. There is no dispute with regard to the payments made by the complainant to the tune of Rs.27,50,000/- which includes the taxes also. As, the respondent has defaulted in the delivery of the possession of the plot till date and the same is not possible as discussed and held above, therefore, the respondent is liable to refund the whole of the amount of Rs.27,50,000/- alongwith interest to the complainant. Once, the amount is deposited with the promoter and he is getting benefit of interest accrued upon said amount, then he cannot deny the similar benefit to the buyer. As such to conclude with, I am of the view that the complainant is entitled return of principal amount of Rs.27,50,000/- alongwith 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% from the respective dates of deposits by complainant side from the dates of payments of respective instalments. There is no evidence with regard to the rate of interest, therefore, it is not possible to calculate the exact amount of

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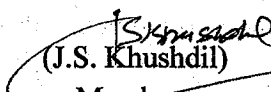
interest. However, here I would like to add that the complainant would be entitled for the simple interest at the State Bank of India highest marginal cost of lending rate of interest (simple) plus 2% on principal amount from the date of respective payments till realization. The respondent is directed to pay the principal amount of Rs.27,50,000/- alongwith simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the date of respective payments till realization of the amount.

12. The complaint is, therefore, partly accepted to the following extent and heads:

01.	Principal amount	Rs.27,50,000/-
02.	Simple Interest	At the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount from the respective dates of deposit of each instalment till realization.

The respondent is directed to pay the above-said amount on account of principal amount and interest to the complainant side within sixty days from the date of this order. A copy of this order be supplied to the respective parties under rules. The matter under Section 17 of the Act may be taken up subsequently in consonance with the administrative/judicial decision of the Authority, if any. Before parting with this order, it is observed, that the complainant may approach the appropriate forum for grant of compensation, if so desired by him. File of complaint be consigned to record room after due compilation.

Dated: 11.02.2019


(J.S. Khushdil)
Member
11/2/2019
Real Estate Regulatory Authority