

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

Complaint No./RERA/GC71/2018
Date of Institution: 25.04.2018
Dated of Decision: 04.07.2019

JBB Infrastructures Private Limited, 509 Ansal Bhawan, K.G.
Marg, Connaught Place, New Delhi-110001.

.....Complainant

Versus

1. Altus Space Builders Pvt. Ltd. Regd. Office-SCF 22, First Floor, Phase 10 SAS Nagar Mohali.
2. Sanjivani Infratech Private Limited, Regd. Office-SCO 128, Sector 8, Chandigarh.

.....Respondent

Complaint under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

Present: Ms. Simarpreet Kaur representative for the
complainant
Shri Ramandeep Singh Pandher and Shri Naresh Pal
Chandel representatives for respondent No.1
Respondent No.2 ex-parte vide order dated
25.07.2018.

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ORDER

1. JBB Infrastructure Private Ltd (hereinafter called as the complainant) has filed this complaint against Altus Space Builders Pvt. Ltd and Sanjivani Infratech Private Limited,

(hereinafter called as the respondents) alongwith documents alleging that in the year 2010, respondent No.1 through respondent No.2 offered the complainant to sell six plots i.e. two measuring 500 sq yards each, two measuring 350 sq. yards each and two measuring 250 sq. yards each, total measuring 2200 sq. yards. Accordingly, an agreement to sell was signed on 28.12.2010 by respondent No.2 through its Director Mr. Gurinder Garg. The total sale price of the plots in question was Rs.1,48,50,000/- (i.e. Rs.1,26,50,000/- as basic sale price and Rs.22,00,000/- as Internal Development Charges (IDC) payable at the rate of Rs.1,000/- per sq. yards) plus EDC and government charges on actual basis. Out of this amount, an amount of Rs.94,50,000/- was to be paid at the time of the agreement and Rs.1,26,50,000/- was to be payable till 31.01.2011 and the balance amount of Rs.22,00,000/- was to be paid at the time of possession. It is further the case of the complainant that an amount of Rs.1,35,00,000/- including IDC were paid by them till

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12.01.2011 to the respondent as pressurized by the latter. The respondent again pressurized the complainant in the month of May 2014 to pay the amount of Rs.22,00,000/- on account of EDC charges on the excuse of early delivery of possession, which otherwise was to be paid to the time of possession and the complainant made the payment through six cheques i.e. two cheques worth Rs.2,50,000/- each bearing No.952801 and 952802 respectively, two cheques worth Rs.3,50,000/- each bearing No.952799 and 952800 respectively and two cheques worth Rs.5,00,000/- each bearing No.952797 and 952798 respectively all dated 19.05.2014. It is further the case of the complainant that on 01.04.2015, when the complainant side visited the site, they were shocked to see that there was no developmental work at all at the spot, but, the complainant was handed over a new set of documents consisting of agreement from the Altus Space Builders Pvt Ltd, respondent No.1, wherein, the terms and conditions were changed and area was also changed and

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IDC and EDC charges were enhanced. However, the complainant was not having any other alternative, but, to sign the said documents as the respondents had told that their allotment would be cancelled and money would be lost. Then 15.03.2017, the complainant received the possession letter only for two plots bearing No.C-130 and C-127 both measuring 475 sq. yards, but, in those plots not only 50% work was completed. The complainant party has paid 90% payment of account of land and 100% payment on account of IDC by January 2011 and 90% on account of Government dues as on 19.05.2014, but, till date possession has not been given, rather the respondents are raising demand for more money. On the basis of above allegations, the complainant has prayed for grant of relief in the form of handing over of possession of the plots in question, to give credit of the amount of Rs.1,57,00,000/-, proof in regard to paid or payable amount on account of ECD charges, to give interest at the rate of 21% on the delayed period in delivery of

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possession of the plots in question w.e.f. 31.12.2012 till 31.12.2017 and an amount of Rs.50,00,000/- as compensation on account of fraud and cheating.

2. Upon notice, none appeared on behalf of respondent No.2 and as such was proceeded against ex parte vide order dated 25.07.2018.

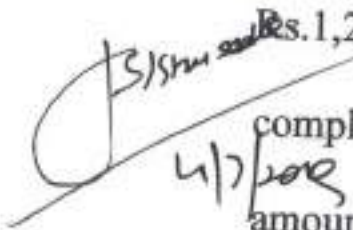
3. However, respondent No.1 appeared and filed written reply raising the preliminary objections in regard to maintainability of the complaint and concealment of facts by the complainant as they have not purchased land from the answering respondent and entered into an agreement with respondent No.2 and about this fact, respondent No.2 has given an affidavit dated 12.05.2014 alongwith

indemnity bond of the answering respondent indemnifying the latter for any losses and damages and

this fact has also been admitted by the complainant side in their affidavit dated 14.05.2014. Thereafter, the complainant also paid the amount of instalment of government charges on 20.05.2014 for the said plots. It is

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further admitted that the answering respondent has received a amount of Rs.1,06,74,300/- from respondent No.2 against the land in dispute till 14.05.2014 and complainant has paid the answering respondent only an amount of Rs.22,00,000/-. It is further alleged that the instant is not maintainable in the presence of arbitration clause in the agreement dated 12.08.2014 signed on 28.04.2015 and both the complainant and the respondent No.2 are bound by the terms and conditions of said agreement. It is further the case of answering respondent that now the project is at its final stage and plots are ready for possession. It is also admitted that till date payment made by the complainant to the answering respondent is Rs.1,28,74,300/- and not Rs.1,57,00,000/- and the complainant has failed to make payment of the remaining amount despite of issuance of offer letter dated 15.03.2017. On merits, while reiterating the preliminary objections and denying the each and every averments of



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the complainant, it is prayed that the complaint may be dismissed.

4. After hearing both the parties, notice under Section 18 read with Section 11 of the Act was served upon the respondent on 30.11.2018, 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.

5. Both the parties have relied upon documents attached with their pleadings and in additional documents, complainant tendered Annexure-C1 and C2 and closed the evidence.

On the other hand, the contesting respondent tendered into additional evidence photographs of development at the site as Annexure R-1/6(colly) and closed the evidence.

6. I have heard the learned representatives for the parties 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

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pleadings and as such it would not be in the interest of justice, to repeat the same here again. The parties have also submitted their written synopses of arguments, which were also perused.

7. It would be appropriate to first incorporate here the admitted facts of the case. The project in question, to which this complaint relates, is registered with this Authority against registration No.PBRERA-SAS80-PR0213. Therefore, the complaint is maintainable in view of the order of Full Authority passed in case titled as *Bikramjit Singh and others Vs. M/s H.P. Singh and others bearing complaint No.3 of 2017 decided on 13.12.2017*. It is an admitted fact that the complainant booked six plots of different dimensions in the project namely Muirwoods Ecocity, New Chandigarh i.e. two measuring 500 sq. yards each, two measuring 350 sq yards each and other two measuring 250 square yards each total measuring 2200 square yards from respondent No.2 M/s Sanjivani Infratech Pvt Ltd. and an agreement

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in that regard was also executed on 28.10.2010. The basic sale price of the plots in question as is mentioned in the said agreement was Rs.1,26,50,000/- and it is also recited in the agreement itself that an amount of Rs.94,50,000/- was paid by the complainant through cheque bearing registration No.721670 dated 09.10.2010. No date of delivery of possession of plots has been mentioned in the said agreement. It is again the admitted fact that respondent No.2 M/s Sanjivani Infratech Pvt Ltd. had agreed to purchase 32500 sq. yards from in phase-1 of Mega Housing project/housing township of respondent No.1 M/s Altus Space Builders, as is apparent from the affidavit and indemnity bond dated 12.05.2014 furnished by respondent No.2 with respondent No.1 and also relied upon by the latter in its pleadings and also during arguments. Out of said 32500 square yards, the respondent No.2 proposed to sell out the plots in question to the complainant. The respondent No.1 is developing the above said township. Even in the indemnity bond dated

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12.05.2014, admitted and relied upon by the contesting respondent a declaration has been made for adjustment of proportionate payments in favour of the third party (complainant and others) out of the total payments may by respondent No.2 towards total 32500 sq. yards at the time of execution of buyer-seller agreement in favour of third party. Then admittedly a plot buyer agreement was executed in between the complainant and the respondent No.1 on 12.08.2014 and that agreement was covered under consolidated agreement dated 06.05.2010 between developer (respondent No.1) and M/s Sanjivani Infratech Pvt Ltd, respondent No.2 and this fact proves the relationship inter-se the respondents. So, the plea of the contesting respondent that they have nothing to do with the agreement dated 28.12.2010 executed between complainant and respondent No.2 is devoid of any force as said agreement as well as the agreement dated 12.08.2014 now executed between the contesting respondent No.1 and complainant pertain to the same land

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or project which is mega housing project being developed by respondent No.1 and without their consent no agreement for sale or sale could be possible. Similarly, the version of the complainant that they were forced to sign the agreement dated 12.08.2014 with changed terms and conditions is also not believable in the circumstances of the case as it was not executed and signed in haste rather was signed by the complainant on 23.04.2015 at Delhi and thereafter the respondent No.1 signed it on 28.04.2015 at Mohali. So, now it does not behove on the part of the complainant to take this plea.

8. As per clause 5.1 of the agreement dated 12.08.2014, the possession of the plots was to be delivered to within 24 months or within an extended period of six months from the date of signing of agreement. The complainant signed this agreement on 23.04.2015 and respondent No.1 on 28.04.2015 and in this manner the possession of the plots was to be delivered to the complainant after 30 months thereafter i.e. (from the date of signing of agreement by

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complainant) upto 21.10.2017. However, as has come on record and has not been disputed by the contesting respondent that the possession of the plots has not yet been delivered to the complainant. However, on this point the representative for contesting respondent has submitted that offer of possession has already been made to the complainant on 15.03.2017, but, the possession has not been taken by the complainant so far. Keeping in view this submission in mind, I have gone through the offer letters dated 15.03.2017 which pertain to two plots bearing No.C-127 and C-130 only, whereas, the complainant has purchased six plots. Further, it is nowhere mentioned in the said offer letters that all the approvals such as completion certificate etc. have been obtained or not and have also not been attached with them. In these circumstances, it cannot be said that the offer of possession only for two plots so made was valid one in the eyes of law. So, the contesting respondent cannot derive any benefit of the above submission of its

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representative. In these circumstances, the fact remains that the possession of the plots in question has not yet been delivered to the complainant.

9. Facing this situation, the representative for contesting respondent submitted that the complaint is not maintainable in the presence of arbitration clause in the agreement dated 12.08.2014, but, this submission does not carry any weight in view of the overriding effect of the Act as per provisions of Section 89. Further, it is noteworthy, that Section 79 of the Act bars the jurisdiction of Civil Courts about any matter which falls within the purview of this Authority or the Real Estate Appellate Tribunal and thus the intention to render the dispute of the kind in hand, as non-arbitral seems to be clear. The learned Chairperson of this Authority has also given similar observations in an order dated 20.03.2018

While deciding the preliminary objection in regard to arbitration clause in complaint case titled as Surjit Kaur Vs. M/s Omaxe Chandigarh Hence, the arbitration clause

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in the agreement does not have any bearing on the outcome of this case.

10. The fact remains that the complainant purchased six plots as discussed above and made the payments towards the total sale price thereof. The complainant is claiming that an amount of Rs.1,57,00,000/- has been paid towards total sale price including EDC, IDC and other charges, whereas, the answering respondent is claiming that only an amount of Rs.1,28,74,300/- has been received by it. Out of the above said amount, the complainant is stated to have paid an amount of Rs.1,12,20,000/- towards basic sale price of the plots. As far as the taxes and charges except the basic sale price are concerned, those have to be paid by the complainant and they cannot claim interest on those payments.

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11. However, the promoter was under obligation to provide lawful possession of the plots within the stipulated period failing which he was to pay interest on the delayed period in delivery of possession as per the provisions of Section

18 of the Act. Apart from that, Clause 9.2 of the specimen of proforma of agreement depicted in Punjab RERA Rules prescribes the rights of the allottee in case of default by the promoter, which runs as under:-

9.2 *In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-*

- (i) *stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by completing the construction milestone and only thereafter the allottee will be required to make the next payment without any penal interest; or*
- (ii) *the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;*

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Provided that where an allottee does not intend to withdraw from the project or terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the apartment/plot."

12. As the complainant does not intend to withdraw from the project and is seeking possession of the plots, which has not been delivered so far and rather the respondent has utilized the amount of Rs.1,12,20,000/- paid on account of basic sale price by the complainant and has earned interest thereon, then, the similar benefit cannot be denied to the complainant on the said amount for the delayed period in delivery of possession of the plots as per clause 9.2 mentioned above. As such, the respondent is also liable to pay interest on the amount of Rs.1,12,20,000/- paid by the complainant (as per own version of the complainant contained in para 4(f) of the complaint) to the respondent towards basic sale price 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 stipulated date of delivery of possession i.e. w.e.f. 21.10.2017 till the date of delivery of lawful physical possession.

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13. Since, the complainant could not get possession of the plots within the stipulated period and has to seek the

remedy under the existing law by way of engaging a representative and contesting this complaint. However, the complainant is itself a company and it appears that it intends to sell the plots in question to some other persons, therefore, it is not entitled for any compensation on account of mental agony, harassment etc. But, the complainant has to engage a representative to represent their case and would have paid litigation expenses in lieu of services rendered by their representative, as such, in the interest of justice, the complainant is required to be compensated on that account. Hence, the complainant is granted litigation expenses to the tune of Rs.33,000/-.


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

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01.	Simple Interest	At the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount i.e. Rs.1,12,20,000/- from the stipulated date of delivery of possession i.e. 21.10.2017 till delivery of lawful physical possession to the complainant.
02.	On account of litigation expenses	Rs.33,000/-

The respondents are directed to pay the arrears of above said amount on account of interest plus litigation expenses within sixty days from today. The respondents are directed to deliver the possession of the plots to the complainant within six months from today and they would also pay future interest at the above said rate from the date of this order till actual delivery of possession of the plots in question to the complainant. Any unaccounted amount from either side shall be adjusted towards above amount. The parties shall remain bound by the statutory obligations laid down under the Act. A copy of this order be supplied to the respective parties under rules. File be consigned to record room after due compilation.

Dated:04.07.2019


(J.S. Khushdil)
Member
Real Estate Regulatory Authority 4/7/2019