BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH

File No. 73/M(SG)
GC No. 12962019
Date of filing: 04.05.2019
Date of decision: 22.10.2019
PBRERA-SAS81-PR0022

Manjit Singh, SCF -19, Kabir Park, PO Khalsa College, Amritsar Punjab - 143002

...Complainant

Versus

Punjab Urban Planning and Development Authority (PUDA), Sector 62, SAS Nagar (Mohali)

...Respondent

Present:- Sh. Vinod Verma, Advocate for the complainant.
Sh. Bhupinder Singh, Advocate for the respondent.

ORDER

The present complaint was filed on 4th May, 2019 by Manjit Singh (hereinafter referred as "Complainant") against Punjab Urban Planning and Development Authority (PUDA) (hereinafter referred as "Respondent") in respect of plot No. 32 measuring 305.02 Sq. Yards under General category at Gateway-City, Sector 118-119, SAS Nagar. Letter of Intent was issued to him vide No PUDAE.O.-Gateway City/2015/19938 dated 27.05.2015 and after paying initial 25% payment allotment letter was issued vide No PUDA-E.O.-Supdt-2(-32/118-119)2016/42245 on 08.09.2016 and the tentative price of the plot was fixed for a sum of Rs.6405420/- at the rate of Rs.21000/- per Sq. Yard. In addition 2% Cancer Cess amounting to Rs.128108/- was also payable towards the price of the plot. The possession was to be handed over to the complainant after the completion of development works at site or 18 months from the date of issuance of allotment letter, whichever is earlier. As per terms of para 3(i) of the allotment letter, the complainant deposited a sum of Rs.1575000/- which was adjusted towards initial 25% of the price of plot. Remaining amount of Rs.4804065/- being 75% was required to be paid either in lump sum without interest within 60 days from the issue of allotment letter or in 6 equated half-yearly installments alongwith an interest @ 12% per annum, as per schedule given in the para 3 (iii) of the allotment letter.

Accordingly, after making the initial payment of 25% of the total tentative price of the plot, complainant deposited a total amount of Rs.5746642/- upto

07.03.2019 from time to time against the balance remaining amount of 75% before the scheduled date of payment of installment as mentioned in the allotment letter in Clause 3(III).

The complainant had alleged that as the allotment letter was issued on 08.09.2016, the possession of the plot was required to be handed over by 07.03.2018, but the possession was not offered. Accordingly, the complainant sent a legal notice to the respondent on dated 13.03.2019 requested to provide the physical possession of the allotted plot alongwith interest, but no response was received from the respondent's, nor any offer of possession has been made till date.

In view of the above, the complainant has sought following reliefs:-

> *"A) Give physical possession of the plot along with all the amenities, sewerage facilities etc.*
>
> *B) Pay interest @ 18% upon the total price of the plot i.e. 64,05,420/-, as the interest for the period from 26.02.2018 till the final possession of the plot.*
>
> *C) Any other relief which this Hon'ble Authority may pass or deem fit and proper in the interests of justice."*

The respondent initially submitted a short reply stating that they have not filed a detailed reply to the complaint, as the complaint is not maintainable, since the project area to which it pertains had been granted a Partial Completion Certificate on 28.04.2017 i.e. prior to the notification of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the "Act"). He invited attention to the decision of the Authority in **Bikramjit Singh and Others, Complaint No. 3 of 2017**, of 13.12.2017 which held that the complaints against non-registered projects are not maintainable.

However, Real Estate Appellate Tribunal, Punjab vide its judgment dated 24.07.2019 in matter of *M/s. Silver City Construction Ltd. Vs. State of Punjab through Principal Secretary, Department of Housing and Urban Development and others* has held the following:-

> *"i. Appeal No. 49 of 2018 is allowed and the impugned order dated 21.12.2017 (A-1) passed by the Real Estate Regulatory Authority, Punjab is quashed and set aside.*
>
> *ii. The proceedings of complaints No. 5 & 7 are remitted to the Real Estate Regulatory Authority, Punjab for decision on merits of the complaints.*
>
> *iii. The Real Estate Regulatory Authority, Punjab shall also decide the validity of the revisional order dated 04.03.2016 (A-2) on its own merits after hearing the rival parties.*

iv. *The Full Bench judgment dated 13.12.2017 passed in complaint No. 3 of 2017 titled as "Bikramjit Singh and other Versus State of Punjab and others" holding that the complaints against promoters in relation to the projects that are not registered with Real Estate Regulatory Authority, Punjab are not maintainable is declared as no longer good law with reference to para 41(2) thereof".*

Accordingly, the Appellate Tribunal has held that Authority is competent to proceed against the projects, irrespective of the fact whether they are registered or not. The project titled as Gateway City, Sector 118-119, SAS Nagar, Mohali stands registered with the authority vide RERA No. PBRERA-SAS81-PR0022 but area in which the plot in question is located is not registered, in view of the fact that Partial Completition Certificate in respect of this area was granted on 28.04.2017. In view of the orders of the Appellate Tribunal, this bench proceeded further with the complaint as provided under the Act and Rules made thereunder and the respondent was directed to file a detailed reply. On 09.10.2019, counsel for the respondent submitted reply and the matter was listed for filing of rejoinder, if needed, otherwise for the arguments.

Today both the parties came present and counsel for the complainant submitted that he is not filing any rejoinder and requested to argue the matter. The counsel for the respondent submitted an application to place on record a copy of order dated 30.09.2019 passed by the Real Estate Appellate Tribunal, Punjab in Appeal Nos. 82 of 2019 to 90 of 2019 vide which the following was ordered:-

"Heard

This order shall dispose of appeals No. 82, 83, 84, 85, 86, 87, 88, 89 and 90 of 2019 as common question of law and facts arise therein.

There is no infirmity in the impugned order. The learned counsel for the appellant has strenuously argued that the portion/area in which the plot of the complainant falls was under a completion certificate already, implying thereby a partial completion of the project which would effectually liberate them from the consequences of the Real Estate (Regulation and Development) Act, 2016, but by virtue of the impugned order they have been held amenable to the jurisdiction under the RERA Act which would prohibit them from satisfying the Authority of their plea of partial completion.

To my mind, this apprehension of the appellant is misplaced. The impugned order merely observes on the strength of an earlier precedent in "Appeal No. 49 of 2018 titled as Silver City Construction Ltd. Versus State of Punjab and others" case that

RERA Act, 2016 would apply uniformly to projects whether registered or not but the order certainly does not preclude the appellant from establishing the plea of partial completion vis-à-vis the project in question and in particular the area where the plot of the complainant falls.

The order passed by the Real Estate Regulatory Authority, Punjab therefore does not warrant any interference and the appeal is dismissed. The appellant would be at liberty to raise these pleas of Partial Completition and produce necessary material before the authority to invite findings on this."

The above order of the Tribunal has been examined and no contradiction has been found in regards to the decision of this bench to proceed further with the complaint as the tribunal has not modified/amended the earlier order of the tribunal dated 24.07.2019.

As per the replies submitted by the respondent on 05.07.2019 & 09.10.2019, the respondent has no where controverted the facts mentioned in the complaint in regards to the timely payments made by the complainant as mentioned at Para No.4(I). At the time of allotment, the respondent was fully aware of the factors which could contribute towards the delay in the completion of the project. It was very much within the scope of the respondent to give a more reasonable date for completion of the development and defer the payments by the allottee but he still chose to offer a date on which he has failed to complete its development and offer possession. The respondent could not satisfactorily explain the reasons for the same and till date no offer of possession has been made.

The counsel further stated that as provided Clause 4(I) of the allotment letter, even if PUDA does not make a specific offer for possession, the same is deemed to be offered on the completion of the development works at site or 18 months from the date of issuance of the allotment letter, whichever is earlier. If possession is not taken by the allottee within stipulated period, it shall deemed to have been handed over on the expiry of the date. This proviso has been inserted as a one sided condition imposed by the promoter in their allotment letter on which the allottees have been forced to sign as they have no choice to change any of the conditions for the fear of cancellation of allotments. The Hon'ble Supreme Court of India in **Civil Appeal No. 12238 of 2018 with Civil Appeal No. 1677 of 2019** has held in para 6.7 & 7 as under:-

"6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.

The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The Appellant- Builder could not seek to bind the Respondent with such one-sided contractual terms."

The allotment letter in this case is also one sided in respect of deemed possession. Accordingly, the said argument of the counsel for the respondent is hereby rejected.

In this case, it is clear that the respondent has failed to offer possession of the apartment within 18 months (07.03.2018) from the date of allotment letter (08.09.2016) nor till date any offer of possession has been made by the respondent despite sending legal notice dated 13.03.2019, which reveals that the respondent has caused delay in offer of possession of approximately 1 year and 7 months 16 day till the date of this order.

Based on the merits of the case and the facts as discussed above, the following is ordered:-

1. As provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest w.e.f. 20.03.2018 i.e. the date by which possession was promised to be offered, as per State Bank of India highest marginal cost of lending rate + 2% till the date of this order. This amount shall be paid within 60 days of this order.

2. In the second part, as provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest to the complainant from the date after the date of this order, till the date of offer of possession of the flat to the complainant as per State Bank of India highest marginal cost of lending rate + 2%.

3. The complainant is not entitled to any separate compensation as provided in Section 18(1) as he has sought the relief of possession and not refund and withdrawal from the project.

The complaint is accordingly disposed off. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent.

(SANJIV GUPTA)
Member
RERA, Punjab

22/10/19

Chandigarh
Dated: 22.10.2019