

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

Date of Decision: 07.01.2020

Complaint No. 1342 of 2019

Date of Institution: 30.06.2019

1. Surjeet Singh Parihar, House No.218, Lane Number 9, Suraksha Vihar, Phase 3<sup>rd</sup>, Paloura Top, Jammu, Jammu and Kashmir – 182124
2. Monika, House No.218, Lane Number 9, Suraksha Vihar, Phase 3<sup>rd</sup>, Paloura Top, Jammu, Jammu and Kashmir – 182124

....Complainants


Versus

M/s Sandwoods Infratech Projects Pvt. Ltd. 3<sup>rd</sup> Floor, SCO 222-223, Sector 34-A, Chandigarh 160022

.... Respondent

Present : None for the complainants  
Shri Munish Gupta, Advocate for the respondent

**ORDER**

 This is a complaint by Shri Surjeet Singh Parihar and his wife Ms. Monika against the respondent for non-delivery of possession of a 3 BHK flat booked by the complainants in the project "Sandwoods Opulencia" developed by the respondent. The facts of the case, as discerned from the complaint and the supporting documents, are that the complainants were allotted 3


BHK Flat No.57 in the Tower D-2/G in the above project, and allotment letter was issued on 18.05.2016. The Buyers' Agreement was executed on 19.05.2016 under which the possession of the apartment was to be given within 36 months of the agreement, with a grace period of 6 months. However, on 31.05.2016 the complainant Surjeet Singh Parihar wrote an email to the respondent to the effect that the Buyers' Agreement was in a standard format and had been signed by them without due scrutiny. However, the date of possession negotiated with the respondent was 16 months from the date of the agreement with a grace period of 6 months and this should be brought on record. Based on this the respondent issued a letter dated 02.06.2016 to the effect that the flat would be allotted by December 2017 with a grace period of 6 months. However, subsequently in February 2018 the respondent wrote to the complainants that the new date of possession would be December 2018. The contention in the complaint is that possession has still not been delivered till date. It is accordingly claimed that possession should be got delivered within a reasonable time and interest for the period of delay should be paid as per the applicable rate.

2. Notice of the complaint was served on the respondent who submitted a reply through Shri Munish Gupta, Advocate. A preliminary objection taken in the reply is that the complaint was not maintainable since it was clearly mentioned in the Buyers' Agreement that any dispute between the parties would be

referred to the arbitration to be held at Delhi. This contention has been raised in some other cases also and was rejected as far back in Complaint No.19 of 2017, (Surjit Kaur Versus M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.) decided on 20.03.2018. As per record, this decision still subsists and has not been upset by any authority/court. The other preliminary objection, and one which has been raised on merits also, is that the complaint was pre-mature since as per the agreement the possession was to be handed over within 42 months of 19.05.2016 i.e. by 18.11.2019. However, this complaint had been filed on 18.07.2019 when the delivery of possession had not even become due. It has also been contended that any delay in the delivery of possession had to be dealt with as per the terms of the agreement under which a payment of Rs.5/-per sq. ft. per month for the period of delay was to be paid. The demand for payment of interest was denied on this ground.

3. When the case was taken up for arguments both parties reiterated the contents of the complaint and reply respectively. On behalf of the complainants, Shri Surjeet Singh Parihar contended that even though the possession of the flat had been delayed he was interested in continuing with the project and hence should be paid interest for the period of delay at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. He admitted so far he had paid only Rs.13.90 lakhs (30% of the base sale price); but contended that no demand for further payment had been raised by the

respondent, and as such there is no default on his part. On the other hand, Shri Munish Gupta stated that as per the terms of the agreement the possession had to be delivered only on 26.11.2019. However, if for the sake of argument it were to be held there was delay in the delivery of the possession then the only relief that the complainants were entitled to was a payment of Rs.5/- per sq. ft. per month. He cited the ruling '2019 (3) RCR (Civil) 181' and pointed out that the Apex Court had held that the allottee was entitled only to the consequences agreed to at the time of executing the Buyers' Agreement; and compensation of higher than the agreed rate could be allowed only if there were exceptional and strong reasons for doing so. Shri Gupta finally pointed out that the complainants had paid only 30% of the price of the apartment even though 3-1/2 years had elapsed since the allotment; and non payment was one of the causes of the delay. He concluded that the complainants should not be allowed to benefit from their own lapse, and the complaint should be dismissed.

 4. Having considered the rival contentions carefully, I am of the view that this complaint deserves to succeed. No doubt the date of delivery of possession as per the agreement was 18.11.2019 but the respondent had itself admitted to deliver the possession initially in December 2017, and then in December 2018. It has been contended in the reply that this was agreed to because of the pressure exerted by the complainants. This however cannot be accepted as a plausible argument. To hold

that an individual allottee of a large group housing project comprising a number of apartments could pressurise the respondent into accepting some unreasonable terms does not appeal to reason. Therefore, it has to be held that the respondent was liable to deliver possession of the flat latest by December 2018. This date seems to have been accepted by the complainants without demur, and therefore can be taken to be final date on which the possession was to be delivered. Regarding the ruling cited by respondent's counsel it is seen that even though the agreement was for a payment of Rs.10/- per sq. ft. per month for the period of delay the Apex Court had itself awarded interest at the rate of 9% per annum. It is also noteworthy that the Apex Court has itself held (in Civil Appeals No.12238 of 2018 and 1677 of 2019 in the case of 'Pioneer Urban Land & Infrastructure Ltd.') that unreasonable terms of an agreement in which the allottee has to suffer much higher consequences for any lapse than the builder are not valid and cannot be enforced. It is also true that according to the registration of the project it is to be completed by December 2021. However, since the respondent had itself offered possession to the complainants they cannot take shelter of this and claim that they are not bound to offer possession before this date. Having said this, it is also needs to be emphasized that the complainants themselves are bound to pay the due instalments at the time agreed upon by them; and only if payment are made in time the project can be expected to be completed at the promised date by the respondent.

5. In the light of the above discussion the complaint is disposed off with the following directions:-

- i. The respondent shall pay interest at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from 01.01.2019 till the date of handing over of actual possession.
- ii. Complainants shall pay installments regularly on demand as per the schedule agreed to in the Buyers' Agreement.
- iii. If the possession is not handed over by 31.07.2020 the complainants would be entitled to file a fresh complaint seeking refund of the money deposited along with interest thereon.

Announced.



Chairperson  
Real Estate Regulatory Authority  
Punjab