

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

I.

Complaint No.1347 of 2019
Date of Institution : 01.08.2019
Date of Decision: 03.03.2020

Dr. Naresh Khanna Alias Dr. Naresh Kumar, Khanna Nursing Home,
Opposite Hira Mandi, Ferozepur, Punjab 152002

.... Complainant

Versus

1. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062

....Respondents

II.

Complaint No.GC 1357 of 2019
Date of Institution :09.09.2019
Date of Decision: 03.03.2020

1. Mohinder Jit Kaur
2. Harpreet Kaur
3. Randeep Arora

All residents of House No.1078, Phase 9, Mohali, Punjab-160062

....Complainants

Versus

1. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
3. M/s Acme Builders Pvt. Ltd. GH-10, JLPL, Sector 90-91, Mohali, Punjab-160071
4. M/s GBP Pvt. Ltd., SCO No.196-197, Sector 34-A, Chandigarh, 160022

.... Respondents

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III.

Complaint No.1359 of 2019
 Date of Institution : 28.08.2019
 Date of Decision: 03.03.2020

Bhupinder Singh, # 1124, Sector 29-B, Chandigarh – 160030

....Complainant

Versus

1. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
3. M/s GBP Pvt. Ltd. SCO No.196-197, Sector 34, Chandigarh – 160022

....Respondents


IV.

Complaint No.1378 of 2019
 Date of Institution:10.09.2019
 Date of Decision: 03.03.2020

Simran Bajaj, # 3491, Sector 35-D, Chandigarh – 160022

....Complainant

Versus

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1. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
 2. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
 3. Manohar Singh and Co., S.C.O. No.139-141, Sector 17-C, Chandigarh – 160017

....Respondents

V.

Complaint No.1382 of 2019
 Date of Institution : 11.09.2019
 Date of Decision: 03.03.2020

Satbir Singh, House No.1643-44, Sector 22-B, Chandigarh -
 160022

....Complainant

Versus

1. M/s Aeropolis Infrastructure Pvt. Ltd., through its Director Shri Tejinder Singh Bhatia, Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Sukhm Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062

....Respondents

VI.

Complaint No.1386 of 2019
 Date of Institution : 12.09.2019
 Date of Decision: 03.03.2020

1. Inderjeet Mohan Kaur
2. Gagandeep Singh

Both residents of # 1716, Sector 61, Phase - 7, Mohali,
 Punjab-160062

....Complainants

Versus

1. M/s Sukhm Infrastructure Pvt. Ltd., through its Director Shri Tejinder Singh Bhatia, Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Aeropolis Infrastructure Pvt. Ltd., through its Managing Director, Aeropolis City, Sector 66-A, Mohali, Punjab-160062
3. Manohar Singh and Co. through its Managing Director, S.C.O. No.139-141, Sector 17-C, Chandigarh - 160017

....Respondents

VII.

Complaint No.1389 of 2019
Date of Institution: 15.09.2019
Date of Decision: 03.03.2020

Rupinder Singh, # MIG 838, First Floor, Phase 10, Mohali, Punjab – 160062

....Complainant

Versus

1. M/s Sukhm Infrastructure Pvt. Ltd., through its Director Shri Tejinder Singh Bhatia, Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Aeropolis Infrastructure Pvt. Ltd., Aeropolis City, Sector 66-A, Mohali, Punjab-160062

....Respondents

VIII.

Complaint No.1421 of 2019
Date of Institution 15.10.2019
Date of Decision: 03.03.2020

Gurmit Singh, House No.94, Sector 71, Mohali, Punjab – 160071

....Complainant

Versus

1. M/s Sukhm Infrastructure Pvt. Ltd., through its Director Shri Tejinder Singh Bhatia, Aeropolis City, Sector 66-A, Mohali, Punjab-160062
2. M/s Aeropolis Infrastructure Pvt. Ltd., through its Managing Director, Aeropolis City, Sector 66-A, Mohali, Punjab-160062

....Respondents

- Present :
1. Shri Mandeep Singh, Advocate for the complainants
 2. Sh Sanjiv Gupta, Advocate for complainant in Complaint No.1347/19
 3. Shri Sunil K Chauhan, Advocate on behalf of Shri Amarbir Dhaliwal, Advocate for respondents M/s Sukhm Infrastructure Pvt.Ltd. and M/s Aeropolis Infrastructure Pvt.Ltd.
 4. Ms. Nidhi Ayer, Advocate for M/s Acme Builders
 5. None for respondent M/s Gupta Builders & Promoters Pvt.Ltd.
 6. Shri Manmohan Sharma, Advocate on behalf of Shri Dinesh Madra, Advocate for Manohar Singh & Co.

ORDER

These 8 complaints will be decided by a common order since similar points of law and facts are involved in each of these. A copy of the order be placed on each file.

2. The complaints are under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondents alleging violation of Section 18 of the Act by way of delay in handing over possession of their plots in the Integrated IT Township 'Yellowstone Landmark Infocity' developed by the respondents no.1 and 2.

3. It may be noted that initially the respondent no.1 'Sukhm Infrastructure Pvt. Ltd had applied for registration of the project in the name of "Yellowstone Landmark Infocity." However, it had subsequently sought a change in the name of the developer to 'Aeropolis Infrastructure Pvt. Ltd' i.e respondent no.2 in Complaint No.1357 with change of project name also to "Aeropolis City". The change was allowed and the project has since been registered as Aeropolis City in the name of above-mentioned respondent no.2.

4. For facility of reference the facts have been taken from complaint no. 1357. The contents of the complaint in brief are that the complainants applied for allotment of the plot, and a booking amount of Rs.20.00 lakhs was paid to the respondent no.3 who was at the time functioning as the agent of respondents no.1. The total price of the plot was Rs.74.00 lakhs, and allotment letter was issued on 13.10.2010. After paying some further amount, the Plot Buyer's Agreement was executed on 24.07.2012 and it was

mentioned therein that possession of the plot would be handed over within 18 months with an extension of 6 months i.e within 2 years from the signing of the agreement. The complainants had already paid a total sum of Rs.81.35 lakhs to the respondents over the course of time, but despite the lapse of almost 10 years from the original allotment possession of the plot had not been handed over. The relief sought is a direction to respondents no.1 and 2 to develop the project and hand over possession of the plot to the complainants; and also the payment of interest for the period of delay from the agreed date of possession till the actual handing over of the plot.

5. The broad contours of the other complaints are similar, with differences only in the amounts paid to the respondents and the dates of such payments.

6. Notice of the complaint was served upon the respondents who appeared and filed their replies.

7. In the reply filed on behalf of respondents no.1 and 2 it has been initially mentioned by way of background information that the respondents had invested in the State of Punjab under the Industrial Policy of 2003 which granted various subsidiaries and concessions to real estate projects. Subsequently however the State Government withdrew these exemptions, thereby adversely affecting the financial viability of the project. The respondents were forced to challenge these actions of the Government in the High Court of Punjab and Haryana vide Civil Writ Petition No.5213 of 2015. The court had noted that the project had been delayed and GMADA had acted to stall the project instead of promoting it; and

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had directed that extension in period of completion of the project should be considered. Accordingly this period was extended by 2 years i.e upto 27.03.2022. It is also submitted that in 5 complaints relating to the same project (bearing nos. CC/279/2017, CC/281/2017, CC/282/2017, CC/283/2017 and CC/285/2017) filed before the State Consumer Disputes Redressal Commission, Chandigarh the Commission had held that the project had been delayed because of the hurdles created by PUDA/GMADA. The matter had been finalised and interest @ 7% p.a. had been allowed from the date of possession upto the date of sanction of the revised layout plan, the implication being that no further relief should be allowed to the complainants. Apart from the above background the following preliminary issues have also been raised in the reply:-

- i. The date of completion accepted by this Authority at the time of registration of the project was 31.12.2021, and hence the respondents still had time to complete the project - the present complaint was therefore pre-mature.
- ii. The complainants had alleged that payment of Rs.81.35 have been made to the respondents. However, these had not been proved by any documentary evidence and only photocopies of the cheques or receipts issued had been attached. Such photocopies could not automatically be used to contend that the payment had actually been received by the respondents. Thus there was a dispute about the factum of actual payment and same could only be adjudicated in a Civil Court. This was more so since some of the receipts produced by the

complainants had been obtained with collusion of, and connivance with, some employees of respondents no.1 and 2.

The reply on merits submitted by respondents no.1 and 2 also is on similar lines and it has been reiterated that the receipts produced by the complainants had been fraudulently obtained by the complainants in connivance with some employees of the respondents. This point has been further elaborated by submitting that as per Annexure A1 of the complaint a sum of Rs.39.10 lakhs had been paid up to 05.10.2010 to respondent no.3 against the price of the plot. However, in the allotment letter dated 13.10.2010 the total sum received had been as shown only Rs.21.35 lakhs, the clear implication being that receipt for the balance amount had been obtained through fraud and collusion. The fraud had come to notice only recently and the respondents reserved the right to initiate legal proceedings against all culprits responsible for the fraud. It is further contended that the respondents were facing financial crunch because of the factors mentioned in the preliminary submissions. The contention about the complaint being premature has also been repeated in the reply on merits. It has finally been contended that the complainants had also filed an application under Section 22(C) of the Legal Services Act before the Permanent Lok Adalat but had suppressed this information while filing the complaint and hence did not deserve any relief.

8. In the reply filed on behalf of respondents Acme Builders it had been alleged that it had only collected the booking amounts from the complainants in the year 2010 amounting to Rs.45.10 lakhs and the entire amount had been handed over to respondent

no.1. The answering respondent had acted only as a booking agent and had no role in developing the project or in handing over possession to the complainants. A similar defence has been put forth by M/s Manohar Singh and Co, who were respondents in some of the complaints.

9. On behalf of respondent Gupta Builders and Promoters Pvt. Ltd. it has been contended that it had entered into a Joint Development Agreement with respondents no. 1 and 2. This agreement was however dependent upon performance of certain obligations by respondents no.1 and 2, and the said agreement had already been determined. Further, a Director of respondents no.1 and 2 had also given an affidavit absolving the answering respondent from any legal or other issues and hence there was no cause of action qua the answering respondent.

10. In the rejoinder submitted on behalf of the complainants it has been pointed out that in Civil Writ Petition No.5213 of 2015 the High Court had held the respondents to be liable to pay various charges such as External Development Charges as per the agreement to the Government. However, the High Court had only directed that extension in time period for implementation of the project may be considered. Further it was pointed out that orders dated 14.05.2019 of the State Consumer Disputes Redressal Commission, Chandigarh were passed on the basis of a settlement arrived at between the parties and hence could not be said to be applicable to the present litigation. It is further contended that all the cheques given by the complainant had been encashed by the respondents no.1 and 2 and payment of the entire amount had

therefore been established on file. The respondents had cooked up a far-fetched story about the commissioning of a fraud by its employees. That this was an imaginary defence without any basis was established by the fact that the respondents had not taken any action whatsoever with regard to the alleged fraud – if such a thing had actually happened the respondent would have moved various authorities for action under the law, but this had not been done till date. It was also submitted that the complaint had withdrawn its case from the Permanent Lok Adalat before filing the present complaint. It was also contended by Shri Mandeep Singh that in 2 cases i.e Complaint No.1386 and No.1421 the allotment letter and buyer's agreement had not been issued by respondents no.1 and 2. However, due payments had been made in these cases also and these respondents had not denied their liability to allot the relevant plots to these complainants.

11. Arguments in 4 cases (Complaints no. 1347/2019, No.1357/2019, 1359/2019 and 1386/2019) were heard on 4.2.20. The above contentions were reiterated by counsel representing the contesting parties while the matter was not argued on behalf of respondents no.1 and 2. Their Counsel was asked to submit written arguments which have been kept in view while deciding these matters. Arguments in the remaining 4 complaints were heard on 18.02.20.

12. I have considered the rival contentions carefully and have also gone through the record of the case. It straightaway needs to be noted that there has been inordinate delay in handing over possession of the plot to the complainants. As per the Buyer's

Agreement signed on 24.07.2012 possession was to be handed over on 24.07.2014 at the latest. However, in view of the fact that both the High Court and the State Consumer Disputes Redressal Commission, Chandigarh have held that the project had suffered delays on account of the attitude of the government authorities it is felt that a grace period of 2 years should be granted to the promoter for completing his obligations. It is accordingly held that in the circumstances of the case the date for handing over possession should be treated as 24.07.2016. It is the delays occurring after this date that would have to be compensated by the respondents no.1 and 2. The respondents' primary defence is that they had not received the full amount alleged to have been paid by the complainant. This however, is negated by the reply filed on behalf of respondent no.3 in which it has been clearly stated that Rs.45.10 lakhs collected by it on behalf of respondents no.1 and 2 in the year 2010 were handed over to respondent no.1. Further, it is the general practice that if an allottee commits default of payment of instalments the promoter actively pursues the payment through issue of reminders etc. No such document or other evidence has been proved in this case. Moreover, in the rejoinder the complainants have attached a copy of their bank statement and these do show that payments have been credited to the account of respondents no.1 and 3. Complete inaction in unearthing the alleged fraud and taking action against any culprits also leads to the conclusion that the defence put up by respondents no.1 and 2 is not believable. The onus on establishing the alleged fraud was on these respondents, and they have failed to discharge it. A bland assertion without any corroborative action/evidence is not enough



to dispel the complainant's claim. Thus the default on the part of the respondents no.1 and 2 is clearly established on file.

13. Coming to the question of relief to be granted it is noteworthy that the date for completion of the project allowed by this Authority is 31.12.2021. In addition, the Punjab Urban and Planning Development Authority has also extended the implementation period for this project till 27.03.2022. Hence at this stage it is not possible to give a direction that possession of the plot should be handed over to the allottee forthwith since the respondents still have time to complete the project. The only relief available at this stage therefore is payment of interest for the period of delay. As per the provisions of the Act and Rules it is held that respondents no.1 and 2 are liable to pay interest at the rate prescribed in Punjab State Real Estate (Regulation and Development) Rules, 2017 with effect from 25.07.2016 till the time possession is actually handed over to the complainants. The respondents would argue that the due interest would be paid, or adjusted, at the time of handing over of possession. However, it is seen that the complainants made the first payment on 17.08.2010, nearly 10 years ago. They have been waiting for possession of the plot for a long period of time and there is still no commitment on behalf of the respondents as to the time by which the possession would actually be delivered. In this background I am of the view that it would be manifestly unfair to the complainants to make them wait for actual relief for a further period of time, the duration of which is not known at this stage. It is therefore ordered that interest on the amount that was deposited before 03.03.2015 i.e

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the amount that has already been used by the respondents no. 1 and 2 for at least 5 years should be paid first, and by 30.09.2020 at the latest. I refrain from prescribing a shorter time for such payment keeping in view the fact that these respondents have already pleaded that they are under financial stress. Even otherwise the lack of liquidity in the real estate sector is a hard reality at present. If the respondents were ordered to immediately pay substantial amounts by way of interest in all these complaints then it would worsen the financial situation of the respondents no.1 and 2 adversely and could even lead to further delays in the completion of the project. The interests of other allottees of the project (other than the complainants) would then be further compromised; and it would not be in the overall interest of the development of the project. Accordingly a time of 6 months is being allowed to the respondents no.1 and 2 to arrange funds for payment of above interest to the complainants. The rest of the accrued interest shall be credited at the time of handing over of possession. The details of the due date of handing over possession i.e. the date from which delay is to be reckoned; and the amount deposited before 03.03.2015 are as below:

No. of complaint	Name of complainant	Area of plot (in sq. yards)	Due date of handing over possession with grace period of two years	Total payment made so far (in Rs.)	Amount deposited before 03.03.2015 (in Rs.)
1347/2019	Dr. Naresh Khanna	500 - industrial	19.07.2016	30,45,000/-	21,45,000/-
1357/2019	Mohinderjit Kaur	1000- industrial	24.07.2016	81,35,000/-	72,10,000/-
1359/2019	Bhupinder Singh	500 - industrial	10.11.2015	59,62,000/-	59,62,000/-
1378/2019	Simran Bajaj	400 - industrial	02.10.2016	27,66,000/-	27,66,800/-
1382/2019	Satbir Singh	250 - industrial	31.03.2016	22,50,000/-	20,00,000/-

1386/2019	Inderjit Mohan Kaur	500 - Industrial	10.08.2013	15,31,400/-	15,31,400/-
1389/2019	Rupinder Singh Cheema	500 - Industrial	24.07.2016	25,57,500/-	25,57,500/-
1421/2019	Gurmeet Singh	400 - Industrial	15.07.2015	26,64,000/-	26,64,000/-

Note : In case of Complaint No. 1386 and 1421, since no allotment letter or Buyer's agreement is available, the due date for handing over possession has been fixed keeping the date of first payment as the date of issue of allotment letter, with the buyer's agreement deemed to have been signed two years later.

14. It is finally noted that since there is no cause of action or relief claimed, against the other respondents, the complaint is accordingly dismissed qua these respondents.

15. The net result of the above discussion is that the complaint is accepted qua respondents no.1 and 2 who are directed to pay interest to the complainants as detailed in para 13 above.

Announced.


 Chairperson
 Real Estate Regulatory Authority
 Punjab