

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

Tr. GC of M-II/1519/File No.16/M(SG)

GC No.12942019

Date of filing: 13.05.2019

Date of decision: 09.06.2020

PBRERA-SAS79-PC0010

1. Anupam Sharma
2. Rajneeta Radhika Karan
R/o C-63, Orbit Apartments, VIP Road Zirakpur-140603

...Complainant(s)

Versus

M/s. Citi Center Developers, VIP Road, Zirakpur, Distt. Mohali, Punjab-140603

...Respondent

Present:- Complainant alongwith Sh. Ved Parkash, Representative & Ms. Manju Goyal, Advocate.
Sh. Manoj Vashishtha, Advocate for the respondent.

ORDER

The present complaint was filed on 13th May, 2019 by Sh. Anupam Sharma (hereinafter referred as "Complainant No. 1") & Ms. Rajneeta Radhika Karan (hereinafter referred as "Complainant No. 2") against M/s. Citi Center Developers (hereinafter referred as "Respondent") in respect of space 334, 3rd Floor, Block-D & E measuring 555 sq. ft. in the project titled as Chandigarh City Center, VIP Road, Zirakpur, Distt. Mohali, Punjab. The Office Space Purchase Agreement (hereinafter referred as "Agreement") was signed between the complainant(s) and the respondent on 24th January, 2017. The total sale consideration for the unit was Rs.26,58,109/- (Rupees Twenty Six Lakh Fifty Eight Thousand One Hundred & Nine only) plus service tax. The allotment letter for the said unit was issued on 27.01.2017 vide allotment letter no. CCC/2017/157. As per agreement Article 4 (i) (Possession), the respondent promised to deliver the possession on or before 11 months of the signing of the agreement i.e. 23rd December, 2017, failing which respondent was bound to pay penalty i.e. @ (prevailing 01 year SBI MCLR P/A + 2%) of the BSP on account of delay. The offer of possession of the said unit was made on 29.03.2019 by the respondent.

The complainant(s) had filed the present complaint alleging that despite making 100% payment for the said unit the respondent had offered them possession of the said unit without obtaining the Completion Certificate/Occupancy Certificate and had not paid mutually agreed upon penalty amount for the delay period from 24th December,



2017 to 22nd August, 2018 (i.e. approximately 8 months). Further, the complainant(s) also alleged that the respondent had paid them penalty amount for period 23.08.2018 to 31.03.2019 and unilaterally stopped the penalty amount from 1st April, 2019. For ready reference prayer so made by the complainant(s) is reproduced hereunder:-

“Prayer:- It is most respectfully prayed for the following-

- 1) *The Respondent may be directed to pay interest as per the RERA Provisions on the total amount paid for the period of delay when compared with the original date of handing over the possession dated 23.12.2017.*
- 2) *The Respondent may be directed to offer Possession at the earliest and till such time continue paying interest amounts at 1. mentioned above till the handing over of Possession.*
- 3) *The Respondent may be directed to indemnify the complainants in case there is any increase in stamp duty, Registration charges at the time of executing Conveyance Deed of the Allotted Unit”.*

Accordingly, the respondent submitted, a detailed reply on 13.03.2020. Perusal of the reply reveals that the respondent has nowhere controverted the facts mentioned in the complaint in regards to the timely payments mentioned above by the complainant and the date of completion of the unit or offer of possession of the unit neither he controverted the fact regarding the payment of penal interest. The counsel for the respondent stated that the office space allotted to the complainant(s) was to be handed over within a period of 11 months from the date of the said agreement with an extension of 3 months i.e. on or before 23.03.2018. In case of failure of the respondent, the penal provisions were also mandated in the said agreement in order to secure the rights of the complainant(s). He invited attention towards the ANNEXURE R-1 letter dated 31.03.2018 issued by the respondent to the complainant(s) with an undertaking that:-

“As the contractual completion date and grace period for possession have both lapsed on 22 March, 2018. Hence, as per RERA Act we will pay you the penalty i.e. @ (prevailing 01 year SBI MCLR p/a + 2%) of the BSP”.

The respondent paid the penal interest upto March, 2019 to the complainant(s) and on 29.03.2019 the respondent offered the possession.

On 28.01.2020, the counsel for the complainant(s) submitted application alongwith additional and supplementary evidence & photographs. In the application the complainant(s) had alleged that the unit allotted to them has been leased out to some other tenant. In support of his contention, he invited attention towards the photographs attached with the application.

On 13.03.2020, the counsel for the respondent submitted reply to the application in which the complainant(s) had alleged that the allotted unit has been leased out to another tenant. During the proceedings, he referred to the photographs submitted by the complainant(s) earlier and argued that the photographs are from 19.7.2019 onwards, which clearly reveals that the said unit was already ready for occupation at the time of offer of possession. He showed a copy of the Completion Certificate received in June, 2019 bearing date of 22.11.2018 and argued that the respondent was in a position to offer possession of the unit to the complainant and at the time the same was done on 29.03.2019 as shown at ANNEXURE R-2. He stated that respondent is willing to pay the interest as agreed upon as per the Real Estate (Regulation & Development) Act, 2016, provisions, till the receipt of completion certificate and for the intervening period from the date of promised possession till the date payment of interest was initiated. The complainant(s) submitted that the respondent is not in possession of Occupancy Certificate/Completion Certificate for which he sought adjournment for filing the same. On 28.05.2020, the counsel for the respondent submitted the Occupancy Certificate/Completion Certificate dully issued by MC Zirakpur vide No. 2811 Dated 22.11.2018 in respect of Block D & E for the ground floor, first floor, second floor and third floor. Counsel for the complainant(s) also submitted some additional documents on record and the matter got listed for arguments today.

Today, both the parties came present and requested to argue the matter. Counsel for the complainant(s) submitted his written arguments. He further submitted that construction and development works are in-complete and the unit allotted to them has been leased out to some other tenant. In support of his submission, he invited attention towards the photographs attached with the application. They asked for payment of interest for the delayed period as per the RERA provisions. The respondent only partly agreed to the request of complainants for payment of interest, instead of total

consideration as per RERA and intentionally excluded grace period of 3 months to the part of complainant(s), without any default on their part.

The counsel for the respondent submitted that offer of possession of the said unit has already been made to the complainant(s) on 29.03.2019. As regards providing the occupancy certificate of the said unit to the complainant(s), he invited attention to the additional documents filed by him on 28.05.2020 regarding possession of the Partial Completion Certificate/Occupancy Certificate vide No. 2811 Dated 22.11.2018 duly issued by the MC, Zirakpur in respect of Block D & E for the ground floor, first floor, second floor and third floor. He further invited attention to the fact that the said unit of the complainant(s) is situated at 3rd Floor in Block D & E and the respondent had offered the possession (29.03.2019) of the unit only after obtaining the Partial Completion Certificate/Occupancy Certificate. He further stated that the respondent had already paid the complainant(s) penal interest w.e.f. 23.03.2018 to March, 2019 i.e. upto offer of possession (29.03.2019).

The photographic evidence produced by the complainant could not be rebutted by the respondent. The photographs clearly reveal that the unit in question was being utilized by an unauthorized person atleast till 14th January, 2020. The complainant failed to take possession of the unit even after 14th January, 2020 although the respondent was in a position to hand over the same as the unit was complete in all respects and the respondent was in possession of valid PCC. Further, the photographs produced by the complainant also show that the unit was fully functional.


In view of the above, the following is ordered:-

- i. 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 from 23.12.2017 till 31st January, 2020, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time after adjusting the amount already paid to the complainant(s) as per the agreed upon terms which are the same as the provisions of the Act & Rules made thereunder.

- ii. No other relief is made out.
- iii. The complainant is directed to take possession immediately failing which respondent will be free to invoke the provisions of the agreement to sell and also section 19 of the Act.

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

Chandigarh
Dated: 09.06.2020


(SANJIV GUPTA)
Member 09/06/20
RERA, Punjab