

**Sundeep Singh Kajla**  
**Vs.**  
**M/s. Ansal Properties and Infrastructure Limited**

**RERA Registration No. PBRERA-SAS81-PR0155**

Present: Sh. Ravinder Pal Singh, Advocate for the complainant.  
Sh. Rajiv K. Bhatia, Advocate for the respondent.

The complainant has alleged that he purchased a 3BHK Flat in Golf Link-1 project promoted by Ansal Properties and Infrastructure Ltd., in the year 2010, for a sale consideration of Rs.28,20,129/- + PLC Charges and EDC. However, he opted to change his flat from 917-FF measuring 1299 sq. ft. to 933-SF measuring 1389 sq. ft. on 24.04.2015. The cost of the new flat was 32,09,499/-. He alleged that he has paid almost 98% of the total price of the flat but the possession has still not been offered to him. He has sought the relief of refund of the entire amount paid alongwith the interest and costs of litigation of Rs.1.00 lac.

The respondent submitted written reply on 13.06.2019 to which the complainant sought time for filing of rejoinder. The matter was repeatedly adjourned as both the parties wanted to explore the possibility of mutual settlement. Despite repeated adjournments the same could not be achieved. Accordingly, the counsel for the complainant made a submission that he wants the matter to be decided on merits.

Both the parties sought time to submit additional documents including the copy of offer of possession as well as calculation sheet in respect of payments made by the complainant and actually received by the respondent. During the proceedings, the counsel for the respondent argued that they have already made an offer of possession 24.05.2015 to the complainant after obtaining occupancy certificate on 19.09.2014 in regards to grounds floor, first floor, and 2<sup>nd</sup> floor for plot no. 933 on which the flat of the complainant was constructed, as part of independent floors.

Today the matter was taken-up for final arguments. The counsel for the respondent referred to the offer of possession dated 24.05.2015 (Annexure R-3 of the reply) and took a plea that since the offer of possession was made, they are not liable for any interest for the delay as the possession was to be made by 15<sup>th</sup> May, 2015 and the same was offered with a delay of only 9 days after obtaining occupancy certificate of the specific flat. He also referred to Annexure A-2 of the complaint which is the relocation letter and statement of account which refers to the schedule of payments and the date by which the payments to be made for the relocated flat. It was further argued that the relocation letter was an integral part of the allotment of the original flat no. 917-FF issued on 25.10.2010. The counsel for the complainant did not contest the same but argued that the offer of possession has never been

received by him and it is only a paper transaction as there is no proof provided in regards to the actual dispatch of the letter offering possession. In this regard, he invited attention to clause 21 of the allotment letter, which states as under:-

*“21. The allottee shall takeover possession of his floor within one month of the offer of possession. The company shall charge holding charges @ Rs.5/- per sq. ft. of the saleable area per month, if the allottee fails to take possession of the said floor within 30 days from the date of intimation in writing by the company.”*

He argued that if the letter of offer had actually been sent to him and since he has failed to take possession, till now, the respondent would have levied the holding charges @ Rs.5 Per sq. ft. of the saleable area per month after the expiry of one month of offer of possession. No such claim has been made by complainant both as part of the reply as well as by way of any communication to the complainant.

Further, the complainant referred to the emails attached by the respondent as ANNEXURE R-4 in which the respondent had proposed a pricing structure for the new unit no. 933-SF for which they asked for a request letter from the complainant and only after the approval of the request letter they proposed further action in the matter. In response to the same, the complainant had sent email on 19<sup>th</sup> March, 2015 in which he stated the following

*“Dear Sir,*

- 1. I received your email about the relocation of unit from 917FF to 933SF*
- 2. I agree with your proposal of relocation, as it meets my requirement and allows possession of unit earlier time frame.*
- 3. Kindly, do the needful so that I can take over the unit at the earliest.”*

The counsel for the complainant argued that since the respondent was already communicating with the complainant by way of email and he had given his consent for the new proposal by way of email only and consequently made all the payments well in time, the offer of possession could also have been made by way of an email. He argued that this act of respondent in not sending the communication through email and producing communication by way of registered post, without any proof of actual dispatch and receipt by the complainant, clearly indicates that the respondent has not made any offer of possession and had produced a forged document to cover his failure to offer of possession in time. As such, the respondent had contravened the provisions of section 18 and is liable to pay interest for the delay in offering possession. Further the counsel contested the claim of the respondent that they have already compensated the complainant by a sum of Rs.11.00 lakh paid to him as full and final



settlement in 2015 by referring to page 2 of his rejoinder filed on 17.09.2019. This matter has already been argued in detail vide interim order on 27.11.2019, in which the details of the amounts received by the complainant were fully explained. The amount actually returned was 9,93,917/- and not 11.00 lakhs which was only a adjustment to facilitate a fresh loan of Rs.25,00,000/- from HDFC out of which Rs.23,49,390/- was paid to the respondent by adjusting the amount earlier paid and the refund amount. Further, the respondent has nowhere claimed that the complainant had actually not paid as per calculation sheet claimed by him. In view of the above, the following conclusions can be drawn:-

1. The complainant accepted the offer of relocation of earlier flat no. 917-FF and changed it to flat no. 933-SF on a plot size of 250 sq. yrd. to be constructed by the respondent as independent floors, as per the relocation letter dated 24.04.2015.
2. The complainants duly made all the required payments well within the time and there is no delay on his part.
3. The complainant has sought the following relief in his prayer:-

*“Opposite party may kindly be directed to refund of deposited amount of Rs.32,09,499/- along with interest as per RERA Act and Cost of present litigation Rs.1,00,000/-.”*
4. The respondent made a false statement that a sum of RS.11.00 lakhs was refunded to the complainant as full and final settlement in 2015.
5. The offer of possession made is only a paper transaction which was never made to the complainant, as no proof of its dispatch has been produced and the reason for not conveying the same by way of email could not be explained by the respondent.
6. The act of the respondent in not levying holding charges of Rs.5 per sq. ft. of the saleable area per month after one month of the alleged offer of possession on 24.05.2015, gives further credence to the argument of the complainant that the offer of possession attached as annexure R-3 is a forged document and is only paper transaction which was never made.
7. The respondent has received an occupation certificate on 19.09.2014 in regards to plot no. 933-SF in respect of ground floor, first floor and second floor of the independent floors constructed on the plot and accordingly could have offered possession, but did not do so.
8. The respondent was in a position to make a valid offer of possession to the complainant after the receipt of alleged occupancy certificate but has not been made till now for reasons known to him as no proof in this regard has been produced.
9. The respondent, by not making a valid offer of possession to the complainant even after more than 5 years of the promised date has contravened the provisions

of section 18(1)(a) despite the fact that it had allegedly obtained an occupancy certificate in respect of the same. The reasons for non offer could not be explained by the respondent except for one letter of offer dated 24.5.2015 which he could not prove.

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

1. Firstly, the respondent shall refund the entire payment made by the complainant, alongwith interest from the date on which the respective payments were made, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time. This amount shall be paid within 60 days of this order.
2. In the second part, the respondent shall pay interest to the complainant from the date after the date of this order, till the date of actual payment of both the refund of the payment made by the complainant and the interest, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time.
3. Thirdly, the respondent shall pay an amount of Rs.25,000/- on account of litigation charges to the complainant.
4. No other relief is made out in this case.

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.

**Chandigarh**  
**Dated: 07.07.2020**

  
**(SANJIV GUPTA)**  
**Member**  
**RERA, Punjab**

07/07/20