

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

**File No. 31/M(SG)  
GC No.11122018  
Date of filing: 05.12.2018  
Date of decision: 07.08.2020  
PBRERA-SAS80-PR0093**

Sumit Kumar r/o 4E/10 North Shri Krishna Puri Ram Krishna Path Patna,  
Patna, Bihar-800013

...Complainant(s)

Versus

M/s. Manohar Infrastructure and Constructions Pvt. Ltd., SCO 139-141,  
Level-1, Sector 17-C, Chandigarh-160017.

...Respondent

Present:- Sh. J.N. Singh (Father-in-law), Authorized Representative for the complainant.  
Sh. Tarninder Singh, Director of the promoter/respondent company alongwith Sh. Dinesh Madra & Sh. Manmohan, counsels for the respondent.

**ORDER**

The father in law, who is also the authorized representative of the complainant, submitted an "Expression of Interest" (annexure C-1 of the complaint) in respect of a Plot measuring 250 sq. yd. in project titled as "The Palm (Palm Springs/Palm Eco/Palm Garden/Villas)" of the respondent, on 09.04.2012. The basic sale price of the plot was Rs.46,25,000/- and in addition EDC and PLC charges. The father-in-law of the complainant remitted a sum of Rs.13,87,500/- on 05.04.2012 through online transaction drawn on State Bank of India alongwith the expression of interest signed by him. The complainant received a copy of customer ledger account dated 29.01.2018 (annexure C-6 of the complaint) which was maintained by the respondent indicating the area of the plot, BSP rate and total BSP amount, EDC charges and also the details of the payments received from the complainant till that date and the amount outstanding towards the complainant. As a consequence, the complainant further made a payment of Rs.15,50,000/- as per details given below:-

<u>Sr. No</u>	<u>Date</u>	<u>Amount</u>	<u>Mode of payment</u>
1.	30.01.2018	200000/-	Through cheque 088726
2.	31.01.2018	250000/-	Through cheque 690928
3.	31.01.2018	300000/-	Through cheque 808595
4.	08.02.2018	800000/-	Through online transaction
	<b>Total</b>	<b><u>1550000/-</u></b>	

After making the payment of the additional amount, in response to the ledger account, the authorized representative (father-in-law) of the complainant submitted a letter dated 15.02.2018 with the subject cited as "Preference Request", annexed as annexure C-5 with the complaint, duly signed by the authorized representative for the complainant. The letter stipulates various conditions i.e. PLC charges @ 10% per. sq. yd. for PGH-44 selected by the authorized representative on behalf of complainant as well as EDC charges @ Rs.4,000/- per sq. yd. This letter was duly signed by the authorized representative for the complainant and counter signed by the respondent.

Thereafter, the complainant filed the present complaint on 05.12.2018 and alleged that he has so far paid an amount of Rs.29,37,500/- which is approximately 70% of the total amount. He further alleged that the possession of the plot was promised in the month of March, 2015 but despite a delay of 44 months the possession has not been offered to him. He accordingly sought the following reliefs:-

*"In view of the facts mentioned in preceding paragraphs, the complainant prays for the following relief(s):-*

- i. To give necessary directions to the respondents for delivery of possession of plot along with interest for delay in delivery of possession till realization as per the provisions of Sec. 18 and Sec.19(3) of the RERA Act read with Rule 16 of PSRE(R&D)Rules,2017.*
- ii. To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for willful default committed by them.*
- iii. To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Sec.12, Sec.14, and Sec. 16 of RERA Act.*
- iv. To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act,2016 to be read with Punjab RERA Rules,2017.*

- v. *To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.*
- vi. *To issue direction to pay the cost of litigation.*
- vii. *To issue direction to pay the compensation to complainant for compensation for his mental agony, pain and harassment.*
- viii. *Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint."*

On receipt of the complaint a notice was issued to the respondent for appearance and reply for 13.02.2019. The following is the sequence of events in regards to the complaint starting from 15.01.2019:-

13.02.2019 Both the parties came present and respondent was explained about the contraventions alleged to be committed and the respondent did not plead guilty and wanted to contest the complaint. Counsel for the respondent sought time for filing of reply. Accordingly, he was directed to file same on or before 28.02.2019 alongwith a copy of the same to the authorized representative for the complainant.

In the meanwhile, counsel for the respondent filed his reply dated 28.02.2019.

05.03.2020 Court was not being held due to other important engagements and matter adjourned with direction to the counsel for the complainant to file rejoinder, if needed, one week prior to the next date of hearing.

27.03.2019 Counsel for the complainant submitted that complainant is not pressing for the relief of compensation and he prayed for hearing by this bench. He further stated that he shall have the liberty to file a case for compensation at later stage in form 'N'. None came present for the respondent and requested through email for adjournment. Counsel for the complainant also sought time for filing rejoinder.

- 02.05.2019 Authorized Representative for the complainant sought time for filing of rejoinder.
- 23.05.2019 Authorized Representative alongwith proxy counsel submitted that he is not filing any rejoinder and requested to adjourn the matter and fix it for arguments. Accordingly, matter adjourned.
- 24.06.2019 Authorized Representative submitted in writing that he has withdrawn his power of attorney issued in favour of his counsel in respect to the present complaint and wanted to pursue his case by his own. He further sought adjournment.
- 23.07.2019 Counsel for the respondent showed his willingness to explore the possibility of mutual settlement by sitting together on 05.08.2019 at 11.00 A.M. at the office of respondent, to which the authorized representative consented and matter adjourned to review the possibility of mutual settlement, if finalized, otherwise for arguments.
- 04.09.2019 Authorized representative for the respondent submitted that there are still some issues which are to be discussed between both the parties for finalization of the mutual settlement and sought adjournment, to which authorized representative for the complainant consented.
- 12.09.2019 Another new counsel came present and filed his power of attorney alongwith authorized representative for the complainant. Both the parties again agreed to explore the possibility of mutual settlement, if any, otherwise, counsel for the respondent shall produce evidence in regards to calculation of EDC and proof of deposit of the same with the Competent Authority alongwith reasons for amended definition of PLC and also justification for introducing IDC at a belated stage, without the prior consent of the buyers. In case mutual settlement is not arrived at, the matter shall be argued on merits with specific reference to the demand of EDC, IDC and PLC and payment of interest for the period of delay in offering possession and matter was adjourned accordingly.

- 11.10.2019 Counsel for the complainant sought time to study the reply and the documents attached. Accordingly, matter adjourned.
- 25.11.2019 Proxy counsel for the respondent sought adjournment on account of pre-occupation of the arguing counsel, to which counsel for the complainant consented. Proxy counsel for the respondent was directed to provide documentary evidence in respect to EDC Charges based on the actual payment required to be made by the respondent to the competent authority. Matter adjourned.
- 06.12.2019 Counsel for the respondent sought adjournment for filing the documentary proof in respect to EDC charges. Counsel for the complainant submitted that after receipt of documentary evidence, from the respondent, he will make his final submissions. Matter adjourned.
- 12.12.2019 Proxy counsel for the respondent sought adjournment on account of pre-occupation of the arguing counsel.
- 13.01.2019 Proxy counsel for the respondent sought adjournment for filing the documentary proof & additional evidence. Matter adjourned.
- 10.02.2020 Authorized Representative for the complainant submitted that he has withdrawn his power of attorney issued in favour of his new counsel in respect to the present complaint and wanted to pursue his case by his own. He further submitted a copy of written arguments. Counsel for the respondent requested to provide last opportunity to explore the possibility of mutual settlement, to which authorized representative for the complainant consented and matter adjourned.
- 27.02.2020 The counsel for the respondent submitted a communication of GMADA vide No.GMADA-DTP-Mega-2015/1803 Dated 18.06.2015 of demand notice for deposit of dues of Mega Residential Project "The Palm" at Village Dhanauran and Mastgarh (LPA Mullanpur, New Chandigarh), Dist. SAS Nagar and admitted that plot in question is not ready for offer of possession, as the development work at the site is still not complete. He stated that the respondent is willing to offer an alternate plot at a location where the

possession can be offered and also taken by the complainant with all the development works complete. He made a conditional offer in this regard subject to the payment of the balance amount as claimed/demanded by the respondent. The authorized representative for the complainant argued that he has already raised an objection to the demand made by the respondent in respect of IDC etc. and as such objected to a conditional offer. He further argued for offer of a specific plot number on the next date of hearing to enable him to check if the plot is fit for possession or not. The counsel for the respondent consented for the same and further gave an undertaking that in addition to offer of a specific plot number, he will also send details alongwith justification for the demand raised by the respondent, by a way of email at email [thakurjipapers@live.in](mailto:thakurjipapers@live.in) to the complainant by 11<sup>th</sup> March, 2020 positively. Both the parties agreed to conclude the arguments on the next of hearing, alongwith submission of documentary evidence, if any, in support of their submissions.

16.03.2020 Counsel for the respondent sought adjournment. Authorized representative for the complainant came present and informed that he had received a copy of calculation sheet alongwith plot buyer's agreement from the respondent's side through email which is detailed and requires further examination. He further stated that he is willing to get the conveyance deed executed in regards to possessionable plot, in case plot is ready and an offer is made by the respondent, subject to final settlement of the other terms & conditions. Accordingly, matter was adjourned.

DUE TO COVID-19 ONGOING PANDEMIC CRISIS MATTER LISTED FOR 18.6.2020.

18.06.2020 Counsel for the respondent sought adjournment as the counsel for the respondent had self-quarantined himself upto 26.06.2020. Accordingly, in the interest of public safety and society, matter adjourned for 01.07.2020.

01.07.2020 The matter was takenup for detailed arguments on 01.07.2020 on which date the borther-in-law of the complainant appeared on behalf

of complainant and after detailed arguments by both the sides the following was mutually resolved:-

1. *The respondent offered to waived off EDC @ Rs.1500/- per sq. yards as against Rs.4000/- per sq. yards demanded from the complainant, which the representative for the complainant accepted.*
2. *By 10<sup>th</sup> July, 2020 the respondent shall make an offer of possessionable plot by intimating him the specific plots number on his email id and shall hand over a copy of the agreement to sell in respect of the same, if acceptable to him, on the next date of hearing.*
3. *The respondent made the conditional offer for plot subject to payment of the entire balance amount, by the complainant, within 15 days of the offer, to which the complainant consented.*
4. *The counsel for the respondent further submitted that in case they are unable make a definite offer by 10<sup>th</sup> July or next date of hearing, they shall reschedule the payment plan and gave an undertaking that the offer of possession shall definitely be made on or before 31<sup>st</sup> March, 2021 and a new payment plan shall be submitted on the next date of hearing, keeping in view the extended period sought by them. The representative for the complainant agreed to the offer."*

Accordingly, the matter was today taken-up for final arguments and for a followup of the decision taken on the previous date of hearing.

Pertinent to mention here that this Authority, on 14.07.2020 decided that hearing in all cases relating to complaints U/s. 31 are being adjourned w.e.f. 15.07.2020, in public interest. These hearings shall be resumed w.e.f. 17.08.2020 and in case any party wishes to have a matter heard early, the reasons for seeking an out-of-turn hearing be submitted. The authorized representative for the complainant came present today and submitted that he is a senior citizen and had come from Nahan (Himachal Pradesh) for this case only. He further requested to argue the matter as the counsel for the respondent as well as Director of the respondent's company were also present. Counsel for the respondent also consented to the same. In the interest of justice, request of both the parties was allowed and this bench decided to proceed with the matter further.

The respondent alongwith his counsel made the following submissions:-

- a. The respondent in his argument referred to annexure C-1 i.e. expression of interest dated 09.04.2012, duly signed by the complainant, vide which the complainant (through authorized representative) remitted a sum of Rs. 13,87,500/- through online transaction for the residential plot. The last condition mentioned in the expression of interest was referred to which is reproduced below:-

*"NOTE:*  
*Xxxx*  
*4. Preferred Location, if available, will attract Preference Location Charges (PLC)*  
*5. External Development Charges (EDC) will be extra."*
- b. The counsel for the respondent alongwith the respondent in person argued that the complainant has consented to pay both the PLC charges as well as the EDC charges demanded from him by way of a copy of the customer ledger account handed over to him 29.01.2018 (annexure C-5), as he never raised any objection to the same.
- c. The respondent argued that the very fact that the complainant made a payment of Rs.15,50,000/- on 30.01.2018, 31.01.2018 and 08.02.2018 subsequent to issuance of a customer ledger account to the complainant on 29.01.2018 indicates that the demand raised by the respondent was acceptable to the complainant and he made payments in response to the same.
- d. The respondent argued that after receipt of the ledger account statement and making additional payments of Rs.15,50,000/-, a consent letter was signed by the authorized representative on 15.02.2018, which the complainant has himself attached as annexure C-5 with his complaint. They argued that the authorized representative for the complainant has nowhere denied having signed this consent letter.
- e. As per the consent letter on 15.02.2018, the authorized representative himself had accepted & signed the conditions of payment of development charges @ Rs.4000/- per sq. yards as mentioned at condition no. 5 and payment of PLC for the north facing plot @ 10% per sq. yards, as mentioned as condition no. 4.
- f. The respondent argued that as a promoter he is liable to develop the project subject to the timely payment of the due instalments by the allottees as



provided U/s. 19 (6) of the Act. In the absence of timely payments by the complainant, despite repeated reminders, he was not liable to offer him possession. He averred that the complainant did not make any payment for 6 years after making the initial payment in 2012. However, he made a conditional offer in respect of plot no. 704E, the possession of which he was willing to offer by 31.10.2020 subject to the condition that the complainant shall sign the buyer's agreement and make 95% of the total payment within 15 days of the offer. The balance 5% amount shall be payable at the time of actual possession.

- g. As a goodwill gesture and one time exception the respondent offered to reduce the demand in respect of EDC by Rs.1500/- per sq. yards. from Rs.4000/- per sq. yd. as mentioned in the copy of customer ledger account dated 29.01.2018 for which the authorized representative for the complainant signed a preference request on 15.02.2018.
- h. The respondent submitted documentary evidence in regards to charging of EDC @ Rs.4000/- per sq. yards. from other similar allottees and also proof of receiving payment from them.
- i. The respondent further argued that in case the complainant fails to agree to the fresh offer in respect of possessionable plot, he shall be at liberty to allot the same to a third party as he could not indefinitely hold the possessionable plots in the absence of timely payment of dues.
- j. The respondent argued that he received a demand notice on 18.06.2015 for deposit of dues of the mega residential project "The Palm" in respect of EDC, license fee, urban development fund, social infrastructure fund and cess for PR-4. Based on the demand for EDC raised by GMADA they submitted a calculation sheet with the written arguments claiming that the EDC payable by them works out to Rs.2,398/- per sq. yard. plus Rs. 567/- per sq. yards. towards Licensee Fee, Interest on L.F., UDF, SIF, PR-4 Cess, Interest on PR-4 Cess etc. making a total of Rs.2,965/-.
- k. The respondent argued that the authorized representative for the complainant had made a request in the year 2018 that he was unable to make payment for all the 3 plots due to his financial difficulties and requested the respondent to adjust Rs.10.00 lakhs from PEC-14, plot in his personal name to PGH-45 (Plot No. 702), also in his personal name. He further made a request to them that he wants to wait for the remaining 2

plots he is short of funds and only wanted possession of plot no. 702 which was in his name. Subsequent to agreeing to the request of the authorized representative by the respondent, he filed the present complaint alongwith 2 more complaints in regards to remaining 2 plots. He alleged that he agreed to the adjustment only on the request of the complainant for sympathetic consideration and subsequently filing of complaints are both unethical and illegal.

At the outset, the authorized representative for the complainant refused to accept the decisions taken on the previous date of hearing and stated that his son was forced to agree to the decisions taken with mutual consent. He made the following submissions:-

- a. The offer of a new possessionable Plot no. 1402 made by the respondent by way of an offer letter submitted before the court today was not acceptable to him.
- b. The offer of discount of Rs.1500/- per sq. yard. from the demand of EDC @ Rs.4000/- per sq. yds. as per the copy of customer ledger dated 29.01.2018 cited as annexure C-6 and letter for preference request dated 15.02.2018 signed by the complainant was not acceptable.
- c. The offer of the respondent offering the possession of the plot by 31.10.2020 was acceptable to him.
- d. The condition of the respondent while making the offer of possessionable plot that the complainant signs the plot buyers agreement and make 95% of the total payment within 15 days of the signing of the same was not acceptable to him.
- e. The respondent gave an undertaking that the proposed plot buyer agreement is as per the agreement to sell provided as ANNEXURE A of the Punjab State Real Estate (Regulation & Development) Rules, 2017 as provided under sub Rule (1) of Rule 8. The authorized representative for the complainant insisted that he will not sign the printed plot buyers agreement proposed by the respondent but will only sign copy of the agreement to sell as per ANNEXURE A of the Rules on a copy which he had himself downloaded.

- f. The authorized representative for the complainant refused to make 95% payment till he is paid interest for the delay in offering him possession and also reducing the demand for EDC as per calculations submitted by him based on a notification of the department of Housing and Urban Development dated 22.06.2010 vide which the complainant calculated the EDC liability to be Rs.578.60 per sq. yards only as against a calculation of a higher amount by the respondent based on a demand notice dated 18.06.2015 for deposit of dues of Mega residential project "The Palm" of the respondent.
- g. The authorized representative for the complainant refused to agree to adjustment of all pending dues at the time of taking over possession and argued for prior payment of interest etc. and a revised demand letter only after which he was willing to give his consent to the offer of possession.
- h. The authorized representative for the complainant argued that he had signed the consent letter of 15.02.2018 (annexure C-5) only under coercion and he does not stand by the same.
- i. He alleged that the expression of interest signed and submitted by him on 09.04.2012 was signed under coercion.

Both the authorized representative for the complainant and respondent have been heard at length and the contents of the complaint, reply of the respondent and written arguments have been thoroughly examined and the following is observed:-

- i. All documents in regards to the purchase of the plot in question and also 2 more plots, in the name of authorized representative, have been signed by the authorized representative himself, thus indicating a common interest in all three plots in respect of which three different complaints have been filed.
- ii. Based on an expression of interest dated 09.04.2012, the complainant agreed to buy a residential plot measuring 250 sq. yard in the project "The Palm (Palm Springs/Palm Eco/Palm Garden/Villas)". One of the conditions mentioned in the said expression of interest was "EDC & PLC charges will be in addition to the rates quoted.
- iii. The authorized representative for the complainant made an initial payment, on behalf of the complainant from his own account, of Rs.13,87,500/-

through online transaction of on 05.04.2012 drawn on State Bank of India, to the respondent.

iv. Subsequently, on 18<sup>th</sup> Mar, 2014, the respondent intimated the complainant to deposit an amount of Rs.9,25,000/- within 15 days to proceed further on the request of complainant and allotment of his registration number, but the complainant did not make the payment.

v. A copy of the ledger account indicating the details of the amounts received and payable by the complainant was handed over on 29.01.2018. In response to the ledger account dated 29.01.2018, the complainant made a payment of an amount of Rs.15,50,000/- as per details given below:-

<u>Sr. No</u>	<u>Date</u>	<u>Amount</u>	<u>Mode of payment</u>
1.	30.01.2018	200000/-	Through cheque 088726
2.	31.01.2018	250000/-	Through cheque 690928
3.	31.01.2018	300000/-	Through cheque 808595
4.	08.02.2018	<u>800000/-</u>	Through online transaction
	<b>Total</b>	<b><u>1550000/-</u></b>	

vi. After making the additional payment of Rs.15,50,000/-, on 15.02.2018, the authorized representative for the complainant wrote & signed a letter for "preference request" (annexure C-4) to the respondent, duly signed by him, in which he had agreed to pay PLC @ 10% per sq. yards and development charges (EDC+IDC) @ Rs.4000/- per sq. yards in addition to agreeing to other conditions.

vii. No buyers agreement has been signed so far despite offer for the same by the respondent today during the proceedings on account of refusal of the authorized representative for the complainant to sign the printed buyers copy presented by the respondent.

viii. The complainant made payment of an initial amount of Rs.13,87,500/- on 05.04.2012 after signing expression of interest and paid an additional amount of Rs.15,50,000/- between 30.01.2018 to 08.02.2018. Thereafter, he did not make any payment towards the balance amount. The total amount paid by the complainant was Rs.29,37,500/-.

ix. Based on the consent given by the representative of the complainant on the last date of hearing, the respondent today made an offer of a possession plot

no. 1402 by 31.10.2020, subject to the condition that 95% of the total payment is made within 15 days of offer of possessionable and signing of plot buyers agreement to which the complainant did not agree.

- x. The respondent today offered to hand over a copy of the printed buyers agreement in respect of possessionable plot no. 1402 but the authorized representative for the complainant refused to accept & sign the same.

Based on the above observations, the following is hereby ordered:-


- i. The complainant is directed to give his written consent or written refusal, within 30 days, to the offer of possessionable plot No.1402 for which the respondent has given an undertaking that the possession shall be handed over by 31.10.2020.
- ii. Since the authorized representative for the complainant has refused to accept the offer of reduction in the EDC Charges from Rs.4000/- to Rs.2500/-, he shall be liable to make the balance payment of BSP alongwith payment of EDC & PLC as per agreed terms and conditions, as mentioned in the initial expression of interest and letter of preference signed on 15.02.2018.
- iii. Since the complainant made a total payment of Rs.29,37,500/- by 08.02.2018 including a sum of Rs.13,87,500/- paid at the time of signing of "expression of interest" on 09.04.2012, the respondent is liable to pay interest for the delay in offering possession to the complainant as provided under section 18 (1) proviso 2 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. 09.02.2018, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time, till the date of this order i.e. 07.08.2020. This amount shall be paid within 15 days of the consent, if given, by the complainant.
- iv. In the second part, as provided in section 18 (1) proviso 2 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, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time, to the complainant from the date after the date of this order i.e.

w.e.f. 08.08.2020 till the handing over of possession, in case, the complainant gives consent within 30 days of this order.

- v. The principal of 'estoppel' shall apply, in regards to prayer for reduction in the amount of EDC & PLC charges, against the complainant, as he has repeatedly given undertakings to make payments based on expression of interest signed by him in 2012 and preference request letter of Feb, 2018 and now he cannot seek fresh set of conditions to be imposed.
- vi. In case the complainant is not willing to take possession of the plot then he may seek refund of the amount paid by him, by filing a fresh complaint, as provided under the Act and the Rules & Regulations made thereunder.
- vii. No case for penalty U/s. 60 of the Real Estate (Regulation & Development) Act, 2016 is made out as the complainant could not prove the same.
- viii. No case for imposition of penalty U/s. 61 of the Real Estate (Regulation & Development) Act, 2016 for contravention of Sections 12, 14 & 16 is made out as the complainant could not prove the same.
- ix. No case is made out in regards to taking action against various functionaries of the respondent company as per section 69 of the Act as the complainant failed to prove the same.
- x. As regards the relief of the criminal action against the respondent, the complainant may approach the competent authority in this regard.
- xi. No other relief is made out.

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(s) and the respondent.

Chandigarh  
Dated: 07.08.2020

  
(SANJIV GUPTA)  
Member  
RERA, Punjab 07/08/20