

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

Complaint No.1491 of 2019  
Date of Institution : 11.12.2019  
Date of Decision: 22.09.2020

1. Ritesh Bansal
2. Kewal Krishan Bansala through its legal heirs

Both residents of B-XI/1005, Gali No.4, K.C. Road, Barnala,  
Punjab 148101

....Complainants


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 M.D., Aeropolis City, Sector 66-A, Mohali, Punjab-160062
3. M/s Manohar Singh and Co. through its M.D., SCO No.139-141, Sector 17-C, Chandigarh - 160017

.... Respondents

Present : 

1. Shri Mandeep Singh, Advocate for the complainants
2. Shri PIP Singh, Advocate for respondents no.1 and 2
3. Shri Manmohan Sharma, Advocate on behalf of Shri Dinesh Madra, Advocate for respondent no.3

**ORDER**

 The complaint is 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.

2. 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. The change was allowed and the project has since been registered as 'Aeropolis City' in the name of above-mentioned respondent no.2.

3. The contents of the complaint in brief are that the complainants applied for allotment of an industrial plot, and a booking amount of Rs.10,56,000/- was paid to the respondent no.3 M/s Manohar Singh & Co. who were functioning as the booking agent of respondents no.1 and 2. The total price of the plot was Rs.26.40 lakhs, and allotment letter was issued on 25.03.2011. After paying some further amount, the Plot Buyer's Agreement was executed on 30.03.2012 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.27.40 lakhs to the respondents over the course of time, but despite the lapse of more than 09 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.

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

5. 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 the Greater Mohali Area Development Authority (GMADA) had acted to stall the project instead of promoting it; and 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.13.86 lakhs have been made to the respondents. However, these had not been proved by any documentary evidence and only photocopies of the 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 no.1 and 2. The fraud had come to notice only recently and the respondents no.1 and 2 reserved the right to initiate legal proceedings against all culprits responsible for the fraud. It is further contended that the respondents no.1 and 2 were facing a 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.

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6. In the reply filed on behalf of respondent no.3 M/s Manohar & Co. it has been mentioned that they were acting only as agents on behalf of respondents no.1 and 2 and had only collected some amounts from the complainants. These amounts had been transferred to respondents no.1 and 2 and they (the answering respondent) were not liable for any default occurring on the part of respondents no.1 and 2.

7. Arguments were heard on 10.09.2020 on behalf of the complainants through video conferencing. Counsel appearing on behalf of other respondents pointed out that their written replies may be treated as their respective arguments.

8. 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 30.03.2012 possession was to be handed over on 30.03.2014 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 30.03.2016. It is the delay occurring after this date that would have to be compensated by the respondents no.1 and 2. The respondents' primary defence is that

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they had not received the full amount alleged to have been paid by the complainants. This however, is negated by the reply filed on behalf of respondent M/s Manohar Singh and Co. in which it has been clearly stated that the money collected by it on behalf of respondents no.1 and 2 was handed over to the respondents no.1 and 2. 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. 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 complainants' claim. Thus the default on the part of the respondents no.1 and 2 is clearly established on file.

9. 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

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prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 with effect from 30.03.2016 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 many years ago (25.03.2011). 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 22.09.2015 i.e the amount that has already been used by the respondents no. 1 and 2 for at least 5 years should be paid first, within three months from today 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 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 three 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.

10. It is finally noted that since there is no cause of action or relief claimed against respondent no.3, the complaint is accordingly dismissed qua this respondent.

11. 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 complainant as detailed in para 9 above.

Announced.

  
Chairperson  
Real Estate Regulatory Authority  
Punjab