

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB

Complaint No.GC 1511 of 2019

Date of Institution :19.01.2020

Date of Decision : 25.01.2021

1. Kunika Sharma w/o Shri Sanjeev Sharma

2. Sanjeev Sharma s/o Col. B.K.Sharma

Both residents of House No.28, First Floor, Shivalik Enclave,
Manimajra, Chandigarh 160101

...Complainants


Versus

Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, SAS
Nagar (Mohali), Punjab - 160062

.... Respondent

Present : Ms. Rupali Shekhar Verma, Advocate for the complainants
Shri Bhupinder Singh, Advocate for the respondent

ORDER

 This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act) against the respondent alleging delay in delivery of residential plot measuring 500 sq. yards in the project 'Eco City 2' developed by the respondent at New Chandigarh.

2. As per the complaint a plot measuring 500 sq. yards in the above project was allotted to one Shri Mukul Bansal on 17.08.2015 for a price of Rs.23,000/- per square yard. The plot was subsequently transferred in the names of the present complainants on 16.10.2015 and they were

acknowledged as allottees by the respondent. As per the Letter of Intent dated 17.08.2015 issued in favour of the original allottee the development works at the site were to be completed in approximately 36 months after which allotment letter was to be issued, with possession to be taken within 30 days thereafter. It is contended that the respondent had accordingly agreed to deliver possession by 16.08.2018 but the same had not been delivered so far despite the entire price having been paid. Accordingly, relief sought in the complaint is the delivery of possession along with interest for the period of delay.

3. Notice of the complaint was served on the respondent who has filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainants.

4. In the reply filed on behalf of the respondent the following legal issues have been raised:-

- i. The letter of intent contained a clause for arbitration in case of any dispute relating to the allotment. As such, the jurisdiction of this Authority was barred.
- ii. There was no condition in the brochure of the scheme or in letter of intent for payment of interest in case of any delay in handing over possession to the complainants.
- iii. A statutory remedy of appeal under Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 was available to the complainants and they should have availed of it rather than filing the present complaint.

On merits, it has been contended that delay in handing over possession was because of the factors beyond the control of the respondent; and that if the complainants were not satisfied with the progress of the scheme they were at liberty to obtain a refund of the money deposited by them as per the policy decision of the respondent Authority, within 30 days of the allotment. It has also been submitted that the allotment letter had already been issued to the complainants on 20.06.2020 and there was no justification for the complainants in not taking over possession of the plot till date.

5. Apart from routine denial of some averments made in the reply it has been mentioned in the rejoinder that allotment letter dated 20.06.2020 was not valid since a specific offer of possession has not been made therein. It is also submitted that since development works were still underway at the site, and the Completion Certificate had not been obtained by the respondent the complainants were unable to take possession of the plot.

6. When the matter was taken up for arguments through video conferencing on 08.01.2021 Ms. Rupali Shekhar Verma, Counsel for the complainant, reiterated the contents of the complaint. She highlighted that all due payments had been made in time and that a sum of Rs.1,66,41,419/- had so far been paid to the respondent. She pointed out that though the allotment letter was issued on 20.06.2020 the development works at the site were not complete and hence the complainants could not take possession of the plot. She drew attention to the status report submitted by the respondent on 07.01.2021, and highlighted the fact that electrical services had still not been energized in the colony. The complainants could not undertake construction without any electric connection and hence could not take possession of the plot, she pointed out. She concluded by raising a

demand of interest for the period of delay in delivery of possession i.e from 10.08.2018 till possession is actually handed over.

7. On the other hand, Shri Bhupinder Singh has also reiterated arguments raised in the reply. He stressed upon the issue that the period of 36 months mentioned in the Letter of Intent was only indicative in nature and could not bind the respondent to the time-line demanded by the complainants. He continued that all conditions of the Letter of Intent had been accepted by the original allottee and had subsequently been made applicable to the complainants also. There was no provision for payment of interest in case of any delay in handing over possession. He also submitted that the allotment of the plot had been made under the Punjab Regional and Town Planning and Development Act, 1995 and the complainants were entitled to seek their remedy under this Act alone. Thus the jurisdiction of the Authority was barred on this account alone also. The Letter of Intent clearly mentioned that completion of development works was subject to the grant of environment clearance from the Government of India. Apart from this, the development works had also been hampered due to onset of the Covid-19 pandemic. He further pointed out that as per the status report submitted to the Authority on 07.01.2021 all development works except energisation of electrical services had been completed. Electricity connection was only required at the stage of start of construction. However, the complainants had not even submitted the building plans as yet, and hence the delay in taking over possession after issue of allotment letter on 20.06.2020 was completely unjustified. He supported this contention by arguing that the respondent was exempt from the provisions of Punjab Apartment and Property Regulation Act, 1995 (hereinafter called as PAPRA) under Section 44(1)(a) thereof. Hence it was not required to obtain a

Completion Certificate; and the complainants could insist on the same before taking possession.

8. The respective contentions have been considered. At the outset it is held that none of the legal issues raised by the respondent have any merit. It has already been held in various orders that the mere presence of an arbitration clause does not preclude the jurisdiction of this Authority. Further, the Act provides for payment of interest in case of delay in handing over possession and this legal right of an allottee cannot be defeated by the lack of such a provision in any document issued by a promoter. It is also seen that the letter of intent clearly mentions that the allottee would be responsible for payment of interest on the balance instalments and also for penal interest at the rate of 18% p.a. in case of delay in payments. Such one-sided arrangements have been held to be illegal by the Supreme Court in '*Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghavan*' (Civil Appeal No.12238 of 2018). Finally, the Act and its Rules only require that the matter pursued by a complainant should not be pending before any other court or authority. The complainants have certified to this effect in para 7 of their complaint. It was well within the complainants' right to decide which of the alternative remedies available to them should be pursued. Similarly, the argument that the time period of 36 months mentioned in the Letter of Intent is only indicative and cannot be accepted. The respondent is a government agency and has to honour the commitments made to its customers. In any case a period of 36 months is felt to be reasonable for the development of a plotted colony. Regarding the matter of development works at the site it is clear that while other works have been completed the energization of electrical services is still to be done. Finally, we do not agree with the argument that the respondent is not obliged to obtain a Completion

Certificate. It may be exempt from the provisions of the PAPRA, but are certainly not exempt from the provisions of this Act. However since as per record of the case most development works have already been carried out, the complainants should take possession of the plot.

9. As a result of above discussion this complaint is accordingly accepted. In view of the nature of the functioning of the respondent a grace period of one year is allowed and the respondent is directed to pay interest at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%), prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 from 16.08.2019 till the actual handing over of possession. On their part the complainants are directed to take possession of the plot within 30 days of issue of this order. If they are unable to enjoy the fruits of their investment on account of delay in energisation of electrical services they would be free to move the appropriate forum at the relevant time.

Announced


(Sanjiv Gupta)
Member


(Navreet Singh Kang)
Chairperson