

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

Complaint No.01 of 2018

Decided on 22.05.2018

1. Jasleen Kaur wife of Col. Mohnesh Singh,
2. Col. Mohnesh Singh son of Lt. Col. Surjit Singh  
both residents of House No. 1163, Sector 34-C, Chandigarh  
....Complainants

Versus

1. M/s Ansal Properties and Infrastructure Limited, registered office 115, Ansal Bhawan, 16 KG Marg, New Delhi 110 001 through its Managing Director
2. General Manager, M/s Ansal Properties and Infrastructure Limited, SCO 183-184, Sector 9-C, Madhya Marg, above British Library, Chandigarh  
....Respondents

- Present :
1. Shri Rajeev Anand, advocate for complainants
  2. Shri Rachit Kaushal, advocate for respondents

**ORDER**

This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 has been filed by the complainants against the non delivery of possession of the apartment booked by them in the Group Housing Project "Victoria Floors, Sector 116, Golf Link-II, Mohali" promoted by the respondents. The relief claimed is refund of the money deposited by the complainants along with interest thereon at the prescribed rate and compensation at the rate

2. Notice of the complaint was served upon the respondents who appeared and filed a reply in which some preliminary objections regarding maintainability of the complaint were also raised. Since counsel for respondents did not thereafter appear on three consecutive dates, they were ordered to be proceeded against *ex parte* on 01.05.2018. However, in the interest of justice the contents of the reply have been taken into account while deciding this matter.

3. This Authority in the case "*Bikramjit Singh VS H.P.Singh (Complaint No.3 of 2017)*" held that complaints in which the cause of action arose before the commencement of the Act could be heard subject to the following conditions:-

- i. The alleged violations are continuing till date.
- ii. The alleged violations must constitute a contravention of RERA Act also.
- iii. The issue should have neither been decided nor be pending in any other Forum/Court.

These conditions are fulfilled in this case. Possession has not been handed over; delayed possession is a violation of the Real Estate (Regulation and Development) Act, 2016; and the complainants have given a declaration that this matter is not pending before any authority or a court of law. The complaint is therefore within the jurisdiction of this Authority.

4. Counsel for complainants was heard on 08.05.2018. He pointed out that they had booked an apartment in the project mentioned

be handed over within thirty six months of the execution of the buyer's agreement on 11.03.2012. Along with the Apartment Buyer Agreement, there was payment plan annexed according to which complainants were to pay 20% of basic sale price and 80% was to be paid by HDFC, a financial institution. Accordingly the complainants had paid Rs.8,84,170.00 while the financial institution HDFC had paid another Rs.13,44,534.00 on their behalf. The receipt for this amount was also issued in the name of the complainants, meaning that the total amount deposited by them came to Rs.22,28,704.00. The complainant pointed out that despite payment of due amounts and despite consistent follow up, the possession of the apartment has not yet been delivered to them. Moreover no construction was ongoing at the site and it was not clear when the possession would actually be delivered. He therefore did not wish to continue with his investment and claimed the refund of deposited money with interest thereon.

5. In the reply submitted on behalf of the respondents, the main preliminary objection raised is that the complainants are not 'consumers' and hence are not entitled to the protection of the Act. The other preliminary objection is that relief under the Consumers Protection Act, 1986 can be awarded only if there is negligence on the part of the respondents; and in the present case there was no such negligence. The objection about the complainants not being a 'consumer' and hence not being entitled to the protection of this Act has already been dealt with by me through order dated 10.04.2018 in a case of *Gautam Uppal Vs M/s Country Colonizers Pvt. Ltd.* (Complaint No.4(a) of 2017). This order is fully applicable to the present case also. Regarding the claim that there was no negligence on the part of the respondents, it only needs to be noted that the present case is not being decided under the Consumers Protection

Act. This defence is not tenable under the Real Estate (Regulation and Development) Act, 2016. The contentions raised in the complaint have generally been denied as being without any merit. Specifically it has only been contended that the respondents are not liable to pay compensation for the delayed possession @ Rs.10/- per sq. feet since they were paying instalments of pre-EMI interest to theHDFC which had provided loan to the complainants.

6. I have considered the rival contentions. It is clear that a payment of Rs.22,28,704.00 has been made by the complainants in the year 2012, but still they have not been offered the possession of the apartment booked by them. As per the agreement, this was to be done within 36 months of the execution of the agreement. No consumer can be asked to wait indefinitely for the possession to be delivered. The complainants' claim to withdraw from the project, therefore, is totally justified and they are entitled to seek refund of money deposited along with interest thereon. The claim for payment of compensation @10/- per sq. feet is however not allowed since interest on the amount deposited by the complainants has already been ordered. To allow both interest and compensation would amount to unjust enrichment of the complainants.

6. This complaint is accordingly accepted and the respondents are directed to refund the amount deposited by the complainants with interest to be paid from the date of deposit to the date of refund at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 i.e State Bank of India's highest Marginal Cost of Lending Rate (as applicable from time to

7. The due amount should be paid to the complainants within a period of two months from the date of issue of this order.

Announced.



Chairperson  
Real Estate Regulatory Authority  
Punjab