

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

APPEAL NO. 07 of 2022

Meenal Lall d/o A.K. Lall, resident of Flat No.608, Orvis
Grand, Green Valley Towers, Old Ambala Road, Opposite DPS
School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104

...Appellant/Complainant

Versus

GVT Builders and Developers, Old Ambala Road, Opposite
DPS School, Gazipur, Zirakpur, District Mohali, Pin Code-
160104.

....Respondent

Memo No. R.E.A.T./2023/ 346

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST FLOOR,
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,
CHANDIGARH-160018.**



Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this **22nd day of September, 2023.**

Shamande Fauzi
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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**BEFORE THE PUNJAB REAL ESTATE APPELLATE TRIBUNAL
AT CHANDIGARH**

Appeal No. 07 of 2021

In GC No. 1540 of 2020

MEMO OF PARTIES

Meenal Lall d/o A. K. Lall, resident of Flat No. 608, Orvis Grand,
Green Valley Towers, Old Ambala Road, Opposite DPS School,
Gazipur, Zirakpur, District Mohali, Pin Code- 160104

...Appellant/Complainant

Versus

GVT Builders and Developers, Old Ambala Road, Opposite DPS
School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104.

...Respondent



Chandigarh

Dated: 9/12/21



SANJEEV GUPTA & RIPUDAMAN SINGH

ADVOCATE

COUNSEL FOR THE APPELLANT

**THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT
CHANDIGARH**

APPEAL NO. 07 of 2022

Meenal Lall d/o A.K. Lall, resident of Flat No.608, Orvis Grand, Green Valley Towers, Old Ambala Road, Opposite DPS School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104

...Appellant/Complainant

Versus

GVT Builders and Developers, Old Ambala Road, Opposite DPS School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104.

....Respondent

Present: - Mr. Sanjeev Supta, Advocate for the appellant.
Mr. Mohammad Sartaj, Advocate for the respondent.

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),
MEMBER (ADMN./ TECH.)**

**JUDGMENT: SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL) (ORAL)**

1. This appeal has been filed against Order dated 12.05.2021 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as Authority), vide which the complaint of the appellant for directing the respondent to complete the pending works in the allotted apartment and to provide proper facilities like club, gym, spa, proper size of lifts etc. and for grant of delayed period interest was dismissed.



2. Aggrieved from the same this appeal has been filed. Notice of the appeal was issued to the respondent qua the size of the lifts only. All other pleas of the appellant qua the remaining reliefs were rejected as is evident from order dated 14.02.2022.
3. Mr. Mohammad Sartaj, Advocate appeared on behalf of the respondent and contested this appeal. It has been contended by the learned counsel for the appellant that as per the approved layout plan the respondent was required to install two lifts of size of 6 ft x 7 ft but the installed lifts are of much smaller size. So the prayer has been made to direct the respondent to install the lifts of the size as approved in layout plan.
4. We have heard the learned counsel for the parties and have gone through the record of the case. It has been contended by the learned counsel for the appellant that lifts ha^{ve} not been installed as per approved layout plan. On the other hand the learned counsel for the respondent has stated that the lifts have been installed as per the requirement and as per the approved site plans. So a prayer for dismissal of the appeal has been made.
5. We have considered the submission of the learned counsel for the parties. It is an admitted fact that one of the lifts has already been replaced during the pendency of the complaint and in its place a bigger lift of the size of 6 ft x 7 ft has already been installed. This fact also stands proved from the affidavit of the appellant dated 18.04.2022. The submission of the learned counsel for the appellant that the second lift is still of smaller size and the same is also required to be replaced with the bigger lift of the size of 6 ft x 7 ft as per approved site plan, is without



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any merit because the same is not substantiated by any documentary evidence on the file. No approved site plan has been placed on the file to show the size of the lifts to be installed in the project in question. Moreover, the lifts in question have already been handed over to the Resident Welfare Association for its maintenance as is evident from letter dated 30.09.2022 addressed to the President of the Resident Welfare Association. No complaint with regard to size of the lifts has been filed by the Resident Welfare Association till date. Furthermore in this case the Completion Certificate/Occupation Certificate has also been handed over to the Resident Welfare Association of the society. The very issuance of completion certificate shows that everything in the project has been completed as per the approved site plans. Therefore, the submission of the learned counsel that the lifts are not of the proper size is rejected.

6. For the aforementioned reasons, no merit is found in this appeal accordingly the same stands dismissed.

7. Files be consigned to the record room.



Sd:-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd:-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)
(Syllabi Officer)
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

September 21, 2023

CND

Shanesh Kaur
Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

22/09/2023 *[Signature]*

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

Appeal No. 7 of 2022

Meenal Lall d/o A. K. Lall, resident of Flat No. 608, Orvis Grand, Green Valley Towers, Old Ambala Road, Opposite DPS School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104

.....Appellant/Complainant

Versus

GVT Builders and Developers, Old Ambala Road, Opposite DPS School, Gazipur, Zirakpur, District Mohali, Pin Code- 160104.

.....Respondent

Present: Mr. Sanjeev Gupta, Advocate for the appellant.
Mr. Mohammad Sartaj Khan/Luv Malhotra, Advocate for the respondent.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)

ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)



JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)

1. By this order, I will dispose of above mentioned appeal, bearing Appeal No. 7 of 2022 (**Meenal Lall versus GVT Builders and Developers**), filed against the order dated 12.05.2021 passed by the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in a complaint bearing GC No. 15402020 instituted on 30.01.2020.
2. A complaint was filed before the Authority by the appellant (*hereinafter may also be referred to as the complainant or the*

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allottee or the buyer) against the respondent (*hereinafter may also be referred to as the promoter or the developer or the seller*) in form 'M' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*), praying therein for the reliefs inter alia of (i) payment of delayed period interest w.e.f. Dec 2017 till the date of handing over the possession on 28.11.2018; (ii) execution of the sale deed in favor of the complainant and conveyance deed of common areas in favor of the association of residents; (iii) refund of the amounts of Rs.11,4000/- paid in excess and Rs.5,72,800/- paid towards GST if not deposited, both amounts along with interest thereon w.e.f. 27.11.2018 till realization; (iv) providing Hob & chimney in the kitchen, wooden flooring in master bedroom, texture paint on the walls of master bedroom and living room, sanitary fittings in bathrooms of international brand as promised, to rectify the seepage etc; (v) provide proper facilities in the club like proper gym, spa facilities in gym, fully equipped swimming pool, making indoor games equipment fully operational, making provision for outdoor games, providing barbecue pit, banquet facility, washrooms in club; (vi) payment of interest on Rs.94,400/-, collected as club charges and GST, till club is fully operational; and (vii) providing proper parking space and proper/large lifts as per approved lay out plan.



3. It has inter alia been stated in aforesaid complaint dated 30.01.2020 that (i) the complainant, in August 2017 booked a residential flat measuring 2,630 square feet super area; (ii) that before booking, respondent had assured to provide all the facilities as mentioned in the brochure; (iii) that it was conveyed to the

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complainant at the time of booking that flat is almost ready, only finishing work is pending; (iv) that total sale consideration was fixed as Rs.71,60,000/- + IFMD Rs.25,000/- + club charges Rs.80,000/- + GST @ 18% (i.e Rs.14,400/-); (v) that allotment letter dated 18.08.2017 was issued to complainant; (vi) that as per the buyer agreement dated 18.08.2017, the possession was to be delivered by December 2017; (viii) that the complainant had paid an amount of Rs.1,50,000/- and Rs.9,39,000/- on 16.08.2017 and 18.08.2017 respectively; (ix) that the complainant took a loan of Rs. 58 lacs from SBI and tripartite agreement was executed on 20.08.2017; (x) that the respondent, vide its letter dated 20.08.2017 demanded an amount of Rs.46,39,000/- which was paid by the complainant from her loan account on 06.11.2018; (xi) that vide other demand letters, the respondent was demanding 12% GST in spite of the fact that the flat was almost ready by August 2017; (xii) that when the complainant resisted about charging of 12% GST on whole amount, the respondent decreased the same to 8% but the fact is that GST came into force in July, 2017 and the flat was almost complete in the month of August 2017; (xiii) that the respondent ought to have got the full input tax credit but it has not passed the benefit of the same to the complainant; (xiv) that the respondent, vide its letter dated 07.07.2018, demanded the balance amount, including Rs.5,72,800/- as GST @ 8%, from the complainant so that possession could be handed over; (xv) that when the complainant saw the flat, most of the work inside the flat was incomplete; (xvi) that there were no common facilities; (xvii) that the complainant conveyed the same to the respondent; (xviii) that thereafter lot of communication took place vide which the complainant had raised the issue of pending works; (xx) that after completing some works, the respondent, vide its letter dated



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23.11.2018, demanded Rs.3,50,200/- against which the complainant paid Rs.2,90,000/- and Rs.71,600/- towards TDS on 27.11.2018; (xxi) that possession was offered on 28.11.2018; (xxii) that thus the complainant had paid Rs.11,400/- in excess; (xxiii) that even then, the respondent is not executing the sale deed in favor of the complainant and refunding the said excess amount despite several request; (xxiv) that many things are still incomplete or are not done by the respondent as assured by it at the time of booking; (xxv) that the material used in the flat is not up to the mark & not as per the specifications as promised; (xxvi) that there is no hob & chimney in kitchen, no wooden flooring in master bedroom, no texture paint on the walls of master bedroom & living room; (xxvii) that the respondent had assured to use bathroom fittings of international standard but it has used local made fittings; (xxviii) that even there is no mirror in the bathrooms; (xxix) that the respondent has only provided a very small parking space which is not sufficient even for the small car; (xxx) that the respondent has charged Rs.94,400/- (including GST) towards club charges but there are no facilities in the said club; (xxxi) that in spite of repeated requests, the respondent has not provided GST receipt of Rs.14,400/- to the complainant; (xxxii) that there is no proper gym, spa facilities, barbeque pit, banquet facilities, & washrooms in the club; (xxxiv) that the respondent has made available unequipped swimming pool; (xxxv) that indoor games are not operational; (xxxvi) that no provision is there for outdoor sports; (xxxvii) that the respondent has provided two lifts of smaller size contrary to size as provided in the layout plan.

4. The respondent, in its reply dated 18.08.2020 to the complaint, has inter alia contended that (i) the possession of the semi-furnished flat was to be given by December, 2017 with a grace period of 3



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months i.e. up to March, 2018; (ii) the complainant defaulted in making timely payments by which the possession was delayed; (iii) that possession was given on 28.11.2018 immediately after receipt of last payment on 27.11.2018 (an excess payment of Rs.11,400/- made by complainant is admitted by the respondent in the detail of payments made); (iv) that the respondent had requested the complainant vide letters dated 20.08.2017, 21.06.2018, 07.07.2018 and 23.11.2018 to make balance payment to enable it to hand over the possession of the flat to her; (v) that the respondent had provided flat No. 1202 to the complainant for storing their households without paying any rent, electricity charges and maintenance charges as is evident from letter dated 07.07.2018 vide which the complainant was also informed that her flat No. 608 is ready and was requested to vacate the flat No. 1202; and the father of the complainant gave an undertaking on her behalf to vacate flat No. 1202 by 10.12.2018; (vi) that partial completion certificate was issued on 15.12.2017; (vii) that the delay period if any is from 01.04.2018 till 28.11.2018 and not from December, 2017 till 28.11.2018; (viii) that the refund of Rs.11,400/- and interest thereon does not arise; (ix) that the respondent has not taken an amount of Rs.2,86,400/- (GST 4%) from the complainant and the said amount of GST was borne by the respondent; (xii) that an amount of Rs.5,72,800/- was correctly charged and collected as GST; (xiii) that as per Central Excise notification dated 28.06.2017, the construction of residential complex (including apartments) attracted GST @ 18% and after taking into account the fact that the supply of service of transfer of "land/undivided share of land" (its value deemed to be 1/3rd) do not attract GST, the GST payable on a flat/house/complex was 12% of total consideration; (xiv) that GST is paid to the GST Department on monthly basis not



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on individual challan basis but on total amount of services rendered during the particular month, therefore, it is not possible and practicable to give GST challan in respect of GST amounts of Rs.5,72,800/- and Rs.14,400/- collected from the complainant; (xv) that the allegations of defects in the flat do not hold water after taking possession on 28.11.2018; (xvi) that the respondent has provided proper facilities in the club like gym, spa facilities in gym, fully equipped swimming pool, indoor games equipment fully operational, outdoor games, barbeque pit, banquet facility, washroom in clubs; (xvii) that the respondent has provided one car parking No. 9 to the complainant through draw held on 23.12.2018 (xviii) that lifts have been installed as per plans and proper maintenance is being done.

5. The complainant filed rejoinder dated 28.09.2020 wherein she has inter alia made additional pleadings and has contended that (i) the respondent has not provided solar water heating systems at the terrace as per the approved layout; (ii) that the respondent has encroached upon the green area as required to be provided as per layout plan between open car parking 2 and 3; (iii) the agreement dated 18.08.2017 is not as per the one prescribed under the Act; (iv) that the respondent has not provided the hob and chimney in the kitchen and the same were purchased by the complainant herself by paying Rs.37,870/-; (v) that flat No. 1202 was provided to her only for storing some household items in June, 2018 and the complainant was not residing therein; (vi) that as the complainant did not pay further installments because the respondent had not completed the work; (vii) that photographs show the defects in the flat etc; (viii) that due to inadequate car parking space, her car got damaged many times; (ix) that the respondent has installed the lifts of size 4.3 feet x 3.5 feet size but made provision of providing lifts



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of size 6 feet x 7 feet as per approved layout plan and thus has violated section 14 of the Act.

6. The Authority passed its order dated 12.05.2021 and decided the complaint as under:-

"4. The respective contentions were reiterated by Counsel when the matter was taken up for arguments on 19.04.2021. We have considered these contentions carefully, have perused the record of the case and our decision on the points raised in the complaint is as follows:

- i. *Though on paper there is a delay in delivery of possession which was due on 01.04.2018 as per the agreement, yet we feel that the complainant has been seriously remiss in revealing the fact that an alternative flat had been provided to her by the respondent in June 2018 and till December 2018. In the rejoinder and during arguments the complainant has only contended that this alternative flat was not used for residential purposes but only for storing household items. That may be so, but the concealment of this material fact does cast doubt over the bona fides of the complaint. The total delay in delivery of possession is about 8 months, and the complainant was provided with an alternative flat for 7 months. It is also seen that the complainant had delayed payments of the instalments. As per relevant clause in the agreement only 5% of the total price was to be paid at the time of possession. Here the complainant had withheld almost 15% of the price and paid it at the time of delivery of possession. In our view the delay in making payments, and more importantly the provision of the alternative flat for almost as long as the delay in delivering the original flat do negate any relief that the complainant might have been otherwise entitled to under the Act.*
- ii. *Since both parties have admitted that they are ready to execute the conveyance deed, the needful should be done within 2 months of the date of issue of this order.*
- iii. *The claim on account of the flat being incomplete and not completed as per promised specifications is also not established. The absence of (i) a chimney and hob in the kitchen (ii) wooden flooring in master bedroom, and (iii) texture paint on some walls have been pointed out in this regard by the complainant. However, as per the Buyer's Apartment Agreement the complainant had bought a semi-finished flat. This fact, about the transaction being for a semi-furnished flat was not disclosed in the complaint, though it has been repeated in other*



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correspondence between the parties also. By its very definition a 'semi-finished' flat is to be completed by the buyer herself. The complainant has not furnished any details of what the specifications of his semi-finished flat were but has instead relied on a brochure applicable to a complete unit. The allegation hence has to be held as not established, and no relief is admissible on this account also.

- iv. Similarly with regard to the lack of facilities in the club the complainant has also not been able to prove the allegations made in the complaint. Only some photographs showing a pool in a state of disrepair have been attached along with rejoinder. However no evidence whatsoever was adduced with the original complaint. Even the photographs attached with the rejoinder are not enough evidence. There is nothing to show that the photograph is actually of the pool in question, the date on which it was taken etc. Even otherwise facilities such as a pool need constant repair and just a photograph showing repairs being carried is not enough to establish that the facility has not been provided.
- v. As far as parking is concerned it is clear from the reply that due parking space (No. 9) has been provided to the complainant. The letter dated 23.12.2018 to this effect has not been rebutted; instead in the rejoinder the complainant has only pointed out that parking space is not proper or sufficient. This contention is also sought to be corroborated by photographs but here too it is held that the complainant has not been able to establish the allegations. The photographs shows that cars being duly parked, and there is nothing on record that the parking space is not as per the agreement. Similarly there is nothing on record to show that the lifts installed are not of the approved dimensions. In the rejoinder the complainant has attached only a copy of the layout plan showing the dimensions of the lift well as 6ft x 7ft. This document by itself cannot however be held to demonstrate that the lifts are not of adequate size.
- vi. Regarding the issue of GST the respondent has contended that it was payable at the rate of 12% of the total price. However, as a gesture of goodwill it had agreed that 4% of the GST would be borne by it while the remaining was to be paid by the complainant. We however are clear that the determination of the correct rate of GST is not within the domain of this Authority. As per the agreement the complainant has to pay the GST; and any dispute about its rate etc. has to be raised before the competent forum.



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5. *As a result of the above discussion, it is held that the complainant has not been able to establish the contraventions alleged to have been committed by the respondent. This complaint is accordingly dismissed."*

7. Aggrieved by the above said order dated 12.05.2021 of the Authority, the appellant has challenged the same before this Tribunal by filing her present appeal dated 09.12.2021, wherein the appellant has inter alia contended that (i) the documents attached with the complaint clearly establish the fact that the respondent had provided the alternate apartment for the purpose of storing the household as admitted by the respondent in its reply; (ii) that the complainant was living somewhere else in a rented accommodation; (iii) that there was no delay in making payments to the respondent as after payment of Rs.46,39,000/- on 31.10.2017, the next installment was never demanded till June-July, 2018; (iv) that the respondent vide letter dated 07.07.2018 demanded the balance amount of Rs.21,24,000/-; (v) that since there were deficiencies in the apartment, the appellant conveyed to the respondent to resolve the same so that she can pay the said demanded amount; (vi) that vide email dated 20.08.2018, the appellant also requested the respondent to initiate the demand note to the bank for releasing the loan amount; the respondent vide its demand letter dated 23.11.2018 demanded an amount of Rs.3,50,200/- against which the appellant by mistake paid Rs.3,61,600/- i.e. Rs.11,400/- in excess; (vii) that the Authority did not accede to the request made by the counsel for the appellant during the arguments to appoint a local commissioner to ascertain the deficiencies; (viii) that during the pendency of the complaint, the respondent replaced one small lift with the bigger one of size as mentioned in the layout plan as was also conveyed by the counsel for the respondent during arguments whereby also conveyed that



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other lift will also be replaced; (ix) that the Authority did not give any finding with respect to the excess amount of Rs.11,400/- to the respondent; (x) that the Authority did not take into consideration violations of the Act committed by the respondent by not providing solar water heating systems at the terrace and green area as per approved layout plan and by not executing the agreement in the proforma prescribed under the Act.

8. During the proceedings before this Tribunal, the appellant was directed to file an affidavit detailing the measurement of the existing lifts as against the ones which were required to be installed as per the approved plans. Accordingly, the appellant has inter alia mentioned in her affidavit dated 18.04.2022 that the appellant got the size of the smaller lift (that was not replaced) inspected on 28.03.2022 from Er. H.G. Ahluwalia, Ex Deputy Chief Engineer, P.S.E.B., who has reported that the internal dimensions of the lift installed in Tower-B to be 4'3" x 3'7½". It has also been mentioned in the said affidavit dated 18.04.2022 that as per approved layout plan, the respondent was to install the two lifts of the size 6 feet x 7 feet.



- On 17.10.2022, the counsel for the respondent stated that the layout plan stood revised and the grievance of the appellant with regard to the lifts is based on the old layout plan which is no longer relevant. The respondent inter alia placed on record a copy of revised site plan drawing No. SUB/GH/08/17/01 dated 01.10.2019.
10. Thereafter, vide Miscellaneous Application No. 329 of 2022, the respondent filed (i) architect's report dated 17.12.2022 wherein it is reported that *"The lifts of Schindler make are installed in Tower-B. The car sizes (internal dimensions of lifts) are as per the drawing and layout plans, and accordingly the completion*

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certificate was issued by the competent authority.”; (ii) supporting affidavit dated 19.12.2022 of the respondent’s partner.

11. Vide its Application No. 29 of 2023, the respondent filed (i) same architect’s another report dated 17.12.2022 wherein it is reported that *“The lifts of Schindler make are installed in Tower-B. The car sizes are 1300mm x 1100mm (4’-3” x 3’-7.5”) (internal dimensions of lifts) for 8 passengers. As per the drawing and layout plan the lift shaft sizes are 1830mm x 2135mm (6’x7’) for 8 passengers, and accordingly the completion certificate was issued by the competent authority.”; (ii) supporting affidavit dated 14.02.2023 of the respondent’s partner.*

12. Thereafter, the respondent, through affidavit dated 02.03.2023 of its partner, has inter alia affirmed and declared that (i) the lifts of Schindler make are installed in Tower-B; (ii) that the car sizes (lift sizes) are 1300mm x 1100mm (4’-3” x 3’-7.5”) (internal dimensions of lifts) for 8 passengers and 1830mm x 2135mm (6’ x 7’) for 8 passengers; (iii) that the sizes of the lifts installed are as per the drawing and layout plans and accordingly Completion certificate was issued by the competent authority.



MY FINDINGS:

13. The appellant booked a 5 BHK 2,630 square feet flat No. 608 at 6th floor of Tower ‘B’ in the respondent’s project namely “Green Valley Towers” for Rs.71,60,000/- basic selling price plus GST as applicable which includes one car parking but excludes Interest Free Maintenance Deposit (IFMD) Rs.25,000/- and Club Membership Charges Rs.80,000/- plus applicable GST.

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14. The appellant in his application dated 15.08.2017 opted for 'Instalment Payment Plan' as per which she was required to make payments as under:-

On application for booking	10% of total price
Within 45 days of booking	15% of total price
On casting of stilt roof slab of tower in which apartment is booked	10% of total price
On casting of 2nd floor slab	7.5% of total price
On casting of 5th floor slab	7.5% of total price
On casting of 8th floor slab	7.5% of total price
On casting of 10th floor slab	7.5% of total price
On casting of 13th floor slab	5% of total price
On completion of brick work within apartment	5% of total price
On completion plumbing work	5% of total price
On completion of electrification work within apartment	5% of total price
On completion of internal plaster work	5% of total price
On completion of all services within apartment	5% of total price + power backup charges of additional load if required
On offer of possession	5% of total price + maintenance + IFMS + stamp duty + club charges + other charges, if any

15. At the time of application for booking of plot on 15.08.2017, the appellant paid an amount of Rs.1,50,000/-.

After receipt of an additional amount of Rs.9,30,000/- on 18.08.2017, the respondent issued allotment letter dated 18.08.2017 for allotment of semi furnished flat No. 608.

17. The respondent entered into buyer apartment agreement dated 18.08.2017 with the appellant, which is not in the format prescribed pursuant to section 13 of the Act and thus the respondent violated the provisions of section 13 of the Act.
18. The aforesaid agreement dated 18.08.2017 provides for following payment plans:



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1. DOWN PAYMENT PLAN (DISCOUNT OF 5% ON BASIC SALE PRICE (BSP))		
(a)	On application for booking	10% of total price
(b)	Within 60 days of booking	85% of total price – booking amount
(c)	On offer of possession	5% of total price + maintenance + IFMS + power backup charges of additional load if required stamp duty + other charges, if any
2. CONSTRUCTION LINKED PAYMENT PLAN		
(1)	On application for booking (Earnest money)	10% of total price
(2)	Within 45 days of booking	45% of total price
(3)	On casting of 8th floor slab	7.5% of total price
(4)	On casting of 10th floor slab	7.5% of total price
(5)	On completion of brick work within apartment	5% of total price
(6)	On completion plumbing work	5% of total price
(7)	On completion of electrification work within apartment	5% of total price
(8)	On completion of internal plaster work	5% of total price
(9)	On completion of all services within apartment	5% of total price + power backup charges of additional load if required
(10)	At the time of possession	5% of total price + maintenance + IFMS + stamp duty + club charges + other charges, if any



A tripartite agreement was executed on 20.08.2017 between the appellant, the respondent and State Bank of India (SBI), the loan amount was to be credited to an escrow account from where the respondent have availed financing facility for the project. A loan of Rs.58,00,000/- was sanctioned by the SBI vide its letter dated 16.10.2017.

20. The respondent, vide its letter dated 20.08.2017 (i.e. within two days of receipt of additional amount of Rs.9,39,000/- from the appellant, issuance of allotment letter and execution of the buyer's apartment agreement, all the three on 18.08.2017), raised a demand of Rs.46,39,000/- (= Rs.57,28,000/- being 80% of the basic sale

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price of Rs.71,60,000/- claimed “Upto Completion of Brick work & Internal Plaster in flat” minus Rs.10,89,000/- already received) plus GST on Rs.57,28,000/- as applicable (but no specific amount or rate of GST is indicated in the said demand letter) towards the next instalment due immediately wherein it is inter alia mentioned that delayed payment interest will be charged @ 18% for delayed period.

21. However, as per construction linked payment plan appended in the buyer’s apartment agreement dated 18.08.2017, the second instalment of 45% of total price was due only after 45 days of booking, whereas the respondent, vide its aforesaid letter dated 20.08.2017, had raised immediate demand even in respect of third to fifth and eighth instalments of aforesaid payment plan.
22. Even then, an amount of Rs.46,39,000/- was admittedly paid by the complainant from her loan account on 31.10.2017.
23. Next demand was raised by the respondent vide its letter dated 21.06.2018 for payment of entire balance amount of Rs.21,24,200/- (includes GST @ 8% on the basic sale price of the plot and @ 18% on club charges). This document placed on record does not talk about any offer of possession.



24. Thereafter, the respondent, vide its demand letter dated 07.07.2018 inter alia (i) informed the appellant that work of her flat has been completed and is ready for possession; (ii) requested her to clear all her dues amounting to Rs.21,24,200/- to enable it to hand over the possession of the flat; (iii) requested her to vacate the flat No. 1202 (owned by one Mr. Jagdish Rai) which was provided by the respondent for storing her households without paying any rent.

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25. In response to the respondent's aforesaid letter dated 07.07.2018, the appellant, vide her letter dated 22.07.2018, informed the respondent that on checking her flat, multiple furnishing issues in the flat have been intimated to the respondent's Construction Engineer; and requested the respondent to let her know when the same can be resolved so that she may make the payment and take possession of her flat and also enquired about the status of her designated parking.

26. The appellant, vide her email dated 20.08.2018, inter alia (i) again shared the issues in the flat with the respondent; (ii) informed that rectification work was still not started when she visited the site on 14th August; (iii) requested to get the changes/rectification done and inform her and assign the designated parking; (iv) requested to initiate demand note to the bank as per loan procedure immediately for Rs.10,72,000/- being the balance towards 95% of basic sale price; (v) informed that the balance 5% will be paid at the time of possession as agreed upon; (vi) reiterated that she would need minimum 20 days from the date of possession, to vacate the current premises.

The respondent has not claimed that it ever denied the aforesaid issues/deficiencies in the flat.

28. Admittedly, the appellant paid an amount of Rs.8,71,000/- on 05.09.2018, Rs.2,03,000/- on 18.09.2018 and Rs.7,00,000/- on 23.11.2018.

29. Thereafter, the respondent, vide its demand letter dated 23.11.2018 inter alia (i) informed the appellant that work of her flat has been completed and is ready for possession; (ii) requested her to clear all her dues amounting to Rs.3,50,200/- to enable it to hand over the possession of the flat.



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30. Admittedly, the appellant paid an amount of Rs.3,61,600/- on 27.11.2018 i.e. an amount of Rs.11,400/- in excess of the amount demanded by the respondent vide its aforesaid letter dated 23.11.2018.
31. Possession of the plot was handed/taken over on 28.11.2018.
32. As per section 19(10) of the Act, the allottee is required to take physical possession of the apartment within a period of two months the occupancy certificate issued for the apartment; and as per clause 7.2 of the format of agreement for sale prescribed pursuant to the provisions of section 13(2) of the Act (the said format is appended to the Rules as Form 'Q'), the promoter, upon obtaining the occupancy certificate or such other certificate from the competent authority shall offer in writing the possession of the apartment to the allottee in terms of the agreement to be taken within three months from the date of issue of such notice.
33. The respondent, in its reply to the complaint, has inter alia submitted that Car Parking No. 9 has been allotted to the appellant through draw held on 23.12.2018.
- In view of above facts, it is evident that the appellant has never defaulted in making timely payments and has taken possession within five days when re-offered vide letter 23.11.2018.
35. The respondent, vide its aforesaid demand letter dated 07.07.2018 inter alia requested the appellant to vacate the flat No. 1202 which, as mentioned therein, has been provided by the respondent to the appellant for storing her households without paying any rent. As per the respondent's reply to the complaint, the father of the complainant on her behalf gave an undertaking (dateless) assuring that aforesaid flat No. 1202 will be vacated by 10.12.2018. The



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Authority, vide its order dated 12.05.2021 has returned one of its findings that an alternative flat had been provided to the appellant by the respondent in June 2018 and till December 2018. The respondent, in its reply to the complaint, has inter alia claimed that partial completion/occupation certificate was issued on 15.12.2017 for 40 units of 5BHK of Block B of the project. In view of these facts, if the works of the flats of Block B including the appellant's flat were complete on 15.12.2017 and was fit for occupation, then why the respondent did not offer possession to the appellant of her flat No. 608 in December 2017 itself and why the respondent provided an alternative flat to the appellant in June 2018 and till December 2018 for storing her households without paying any rent?

36. As per clause 11 of the buyer's apartment agreement dated 18.08.2017, the promoter was required to give possession of the apartment by December, 2017; and a further period of 3 months could be allowed for arranging necessary sanctions/occupation, no objection certificate etc from the competent authorities. Partial completion/occupation certificate has been issued on 15.12.2017 for 40 units of 5BHK of Block B of the project. The respondent has not claimed that after 15.12.2017, it arranged any other necessary sanction, no objection certificate etc from the competent authority before handing over the possession of the flat. Hence, the further period of 3 months can not be allowed for giving possession.

37. Regarding the size of lifts, as per the document placed on record by the respondent before this Tribunal, the car sizes of Schindler make lifts installed in Tower-B are 1,300 mm x 1,100 mm (4'-3" x 3'-7.5") (internal dimension of lifts) for 8 person and as per the



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drawing and layout plan the lift shaft sizes are 1,830 mm x 2,135 mm (6'x7') for 8 passengers. Further, as per copy of planning data of Schindler company, which has been placed on record before this Tribunal, for a car size 1,100 mm x 1,300 mm, one of the five corresponding sizes of the shaft for the lift is 2,100 mm x 1,790 mm. The appellant has not controverted the said document. Even as per aforesaid report dated 28.03.2022 placed on record by the appellant itself, the internal dimensions of the lift installed in Tower-B is 4'3" x 3'7½". Hence, contention of the appellant that smaller lift(s) have been installed, can not be accepted.

38. However, in my opinion, the respondent was liable to pay interest, in terms of proviso to section 18(1) of the Act, for the period from 01.01.2018 to 28.11.2018 for delay in handing over the possession of the flat within three months from 28.12.2018^{11 30}; and is also liable to refund an amount of Rs.11,400/- (paid by the appellant on 27.11.2018 in excess of the demand raised by the respondent vide letter dated 23.11.2018) to the appellant along with interest thereon till realization.

MY DECISION:

In view of above, I deem it appropriate to allow the appeal and to modify the order dated 12.05.2021 passed by the Authority in complaint bearing GC No. 15402020 to the following extent:-

- (i) The respondent is hereby directed to pay interest to the appellant at the rates prescribed under Rule 16 of the Rules from 01.01.2018 or the dates of respective payments made by the appellant to the respondent, whichever is later, till 28.11.2018 within 60 days from this order along with further



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interest thereon at the aforesaid rate from 29.11.2018 till realization.

- (ii) The respondent is also directed to refund an amount of Rs.11,400/- to the appellant along with interest thereon at the aforesaid rate from 27.11.2018 till realization and the same too shall be paid within 60 days of this order.

40. The appeal is accordingly disposed of. A copy of this order be filed in the file of the appeal and also be communicated to the parties as well as to the Authority and thereafter the files be consigned to the record room.



September 21, 2023

Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

Certified To Be True Copy

Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

22/09/2023