

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

Complaint No.55 of 2018

Date of Decision 09.10.2018

1. Bimal Kumar Goel

2. Seema Goel

Both residents of House No.125, Bank Colony, Patiala, Punjab

....Complainants

Versus

Country Colonizers Pvt. Ltd. P.O. Rayon and Silk Mills, Adjoining
Coca Cola Depot, G.T.Road, Chheharta, Amritsar, Punjab.

.... Respondent

Present : Shri J.P.Singla, Advocate for complainant
Shri Satwinder Singh, Advocate for respondent.

ORDER

The present complaint has been filed by Shri Bimal Kumar Goel and Ms. Seema Goel under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the RERA Act) against the respondent, alleging undue delay in delivery of possession of the dwelling unit booked by the complainants in Sector 99 (subsequently changed with mutual consent to Sector 85), Mohali. It is alleged that agreement for above unit was signed on 13.11.2014 and possession was to be delivered within 24 months. The complainants had deposited a sum of Rs.57,93,296.00 with the respondent but the possession had not been offered even till the filing of the complaint. It is only thereafter that possession was offered on

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02.07.2018. However, the complainants were no longer interested in retaining the dwelling unit because of delay, and claimed that the amount paid to the respondent may be refunded with interest.

2. Notice of the complaint was served on the respondent who appeared and submitted a reply. A number of preliminary submissions have been raised in the reply, which may be noted as follows:-

- i. That the complaint was not maintainable since the complainants were not to use it as their residence but had only purchased it for investment purposes. This violated the condition of the agreement that the dwelling unit would be used only for residential purposes.
- ii. Since the complainants were not 'consumers', they could not seek protection of RERA Act, which was enacted to protect the interest of the consumers.
- iii. That the complaint was not maintainable in view of the presence of the arbitration clause in the agreement.
- iv. That the RERA Act is prospective in nature and cannot be invoked in the cases of transactions that took place prior to its enactment.
- v. That the complainants had violated the provisions of the agreement and had also failed to adhere to the stipulated payment plans. Thus they were themselves in default and the complaint should be held to be non maintainable.

3. Regarding the above preliminary objections, it is to be noted that the objections at serial nos.(i) and (ii) above had been raised by

the same respondent in a similar case of '*Gautam Uppal Vs. County Colonizers Pvt. Ltd., (Complaint No.4 (a) of 2017)*' which have been rejected vide my interim order dated 10.04.2018 in that case. These orders have not been challenged before any higher authority and therefore have to be followed. Similarly, regarding objection at serial no.(iii) above, it is also noteworthy that this exact objection has also been decided by my interim order dated 20.03.2018 in the case of '*Surjit Kaur Vs Omaxe Chandigarh Extension Developers Pvt. Ltd., (Complaint no.19 of 2017)*'. About objection no.(iv) it only needs to be noted that Hon'ble Bombay High Court has upheld the constitution of the validity of the RERA Act, and opined that it is not retrospective in nature. Even otherwise, the Full Bench of this Authority has also held in '*Bikramjit Singh's* case in relations to agreement that were entered into before the commencement of RERA Act, could be taken up in case the following conditions are fulfilled:-

- i. The alleged violation, though commencing before the enforcement of the RERA Act, must be continuing till date.
- ii. The alleged violation must also constitute a contravention of the RERA Act and the rules and regulations made thereunder.
- iii. The issue should not have been decided, or be pending, in any forum/court before approaching this Authority. This is necessary to avoid multiplicity of litigation.

These conditions are fulfilled in the present case

The last preliminary objection would be discussed in the succeeding parts of this order.

4. It is therefore held that the preliminary objections raised by the respondent do not have any merit and the complaint has to be decided on merits.

5. Arguments were heard on 11.09.2018 and written arguments have also been submitted by both parties.
6. Shri J.P.Singla, Advocate, counsel for the complainants reiterated the contentions of the complaint and pointed out that the complainants had invested a huge amount to purchase a flat in the project developed by the respondent. However, the respondent had miserably failed to fulfil its obligations of delivering possession within 24 months of the agreement, with a grace period of 6 months. Even allowing for this grace period possession should have been delivered by 13.05.2017. However, possession had not been offered even at the time of filing of the complaint on 10.04.2018. Because of this unreasonable delay the complainants were not interested in retaining the flat and they wanted the amount deposited by them should therefore be returned. He pointed out that during the pendency of these proceedings the respondent had offered possession to the complainants but this development was hit by the doctrine of *lis pendens* and could not be taken into account. He, therefore, demanded the return of money deposited by the complainants along with interest thereon; and also compensation for the mental harassment caused to them.
7. On the other hand, Shri Satwinder Singh, Advocate counsel for respondent has pointed out that the complainants had defaulted in fulfilling their part of the agreement, and even in depositing various instalments at the due time. Notice for cancellation of the allotment had to be served upon the complainants, who were habitual defaulters and therefore could not point a finger at the respondent. It was further submitted that time period of 30 months mentioned in the agreement was not mandatory and it was only mentioned that

the respondent would endeavour to hand over the possession within 30 months. Counsel next pointed out that in order to display their bona fides, the respondent had paid huge amounts to the bank on account of pre-EMI interest; and would not have done so if they had no intention in completing the project in time. It was finally contended that since the prices of real estate had come down substantially the complainants wanted to wriggle out of their agreement and had resorted to present proceedings only to achieve this objective.

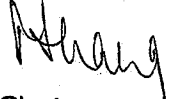
8. The matter has been considered. As already noted above, none of the above preliminary objections raised on behalf of the respondent contains any substance. Coming to the merits of the case, it is clearly established on the record that the respondent has not been able to deliver possession within the stipulated time i.e 2 years and a grace period of 6 months. It has been contended that this was not a mandatory stipulation and the only commitment that the respondent would endeavour to hand over possession within above period. This contention cannot be accepted. Time is of the essence in such contracts and the complainants cannot be expected to wait indefinitely for the respondent to complete the project and hand over its possession to them. As it is they have waited for about a year before the filing of the present complaint. It cannot, therefore, be said that their desire to withdraw from the project is unreasonable. The respondent's other contentions that the complainants have been defaulted on various obligations, including that of timely payment of instalments, is also without merit. If the complainants had defaulted on any account, the respondent should have taken action under the terms of the agreement. They chose not to do so and now cannot be

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allowed to plead this in their defence, even if for the sake of argument it is accepted that the complainants were actually in default.

9. As a result of above discussion, the complaint is accepted. The respondent is directed to refund the amount paid by the complainants along with interest prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 within a period of two months from the date of receipt of this order, after adjusting the pre-EMI interest paid by the respondent to the financing institution.

Announced.


Chairperson
Real Estate Regulatory Authority
Punjab