

**BEFORE SHRI J. S. KHUSHDIL, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, MADHYA MARG,
SECTOR 18A, CHANDIGARH**

I)

Complaint No./RERA/GC1075/2018

Date of Institution: 18.11.2018

Dated of Decision: 22.08.2019

Anita Juliet Singh, resident of Flat No.303, Block A-1, Nirmal Chhaya Towers, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali), Pin Code 140603.

.....Complainant

Versus

Citi Centre Developers, Chandigarh Citi Centre, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab, Pin Code 140603.

.....Respondent

II)

Complaint No./RERA/GC1076/2018

Date of Institution: 18.11.2018

Dated of Decision: 22.08.2019

Anil Vivan Singh, resident of A1 303, Nirmal Chhaya Towers, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali), Pin Code 140603.

.....Complainant

Versus

Citi Centre Developers, CCC, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab, Pin Code 140603.

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.....Respondent

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III)**

Complaint No./RERA/GC1077/2018

Date of Institution: 18.11.2018

Dated of Decision: 22.08.2019

Vandana Singh, resident of A1 303, VIP Road, Nirmal Chhaya Towers, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab, Pin Code 140603.

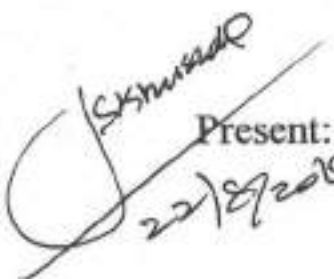
.....Complainant

Versus

Citi Centre Developers, CCC, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali), Pin Code 140603.

.....Respondent

Complaints under Section 31 of the Real Estate (Regulation and Development) Act 2016.

 Present: Shri M.S.Khillan representative for the complainant
Shri Manoj Vashishtha and Shri Naveen Grewal
representatives for the respondent

ORDER

1. Vide this common order I prefer to decide the above mentioned three complaint cases as the facts and law points involved in all the three are similar. The facts are being taken up from the complaint case GC No.1075 of

2018 titled as Anita Juliet Singh Vs. M/S Citi Centre Developers.

2. As per the case of the complainants, the project namely Chandigarh Citi Centre is duly registered with this Authority against registration No.PBRERA-SAS79-PC0010. The complainants bought the shop-cum-offices from the respondent detail of which including sale price of the unit, amount paid by the complainant and agreement in all the three complaints is as under:-

Complaint No.	SCO No.	Sale price in rupees	Amount paid in rupees	Agreement date
GC No. 1075/18	12A, lock-A LGF	49,00,000/-	51,55,100/-	09.10.2015
GC No. 1076/18	9 LGF Block-A	33,50,000/-	35,15,542/-	10.03.2015
GC No. 1077/18	13 LGF Block-A	49,00,000/-	51,55,100/-	30.04.2016

3. The possession of the above said SCOs was to be delivered to the respective complainants within 36 months from the date of execution of the agreement complete in all respects. It was further agreed that the maintenance would be Rs.3/- per square feet and no maintenance for car parking was fixed as the same was not allotted. It is

further alleged by the complainants that the respondent has failed to deliver the possession to the complainants by stipulated time and also allegedly demanded maintenance at the rate of Rs.10/- per square feet and that too in advance for two years. The maintenance charges also included those items which are not essential services and the maintenance claimed is not reasonable. Therefore, the complainants have prayed for delivery of early legal possession of the SCOs to them while setting aside the exorbitant illegal demand of the respondent for maintenance and also interest for delay in delivery of possession.

4. Upon notice, respondent appeared through representative and filed written reply raising the preliminary objections in regard to maintainability, non-joinder of necessary parties, suppression of facts. Besides, it was averred that the project under reference is a big commercial complex and is required to be maintained. The complainants invested for their units and executed agreement for

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maintenance of the project and agreed to pay Rs.3/- per square feet of the super area per month in advance and refundable security of Rs.25,000/- at the time of possession as per clause 3(a) of the maintenance agreement. The respondent has to provide maintenance services, which were to be specified later on. (The respondent has elaborated various clauses of the agreement which are not being reproduced here for the sake of brevity and may be discussed in the later portion of the order if need be.) It is further submitted that the complainants made the balance payments and possession of the unit in question was offered to the complainants on 05.06.2018, but, the complainants have not taken the possession. As the complainants could not find suitable lessee for their units, therefore, they started malicious process to avoid the maintenance charges. On merits, the respondent has reiterated that the detail of services in maintenance were informed to the complainants. According to the respondent the actual maintenance

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expenses come to Rs.11.7 per square feet, but, the respondent has asked the complainants to make payment at the rate of Rs.10/- per square feet only. The rest of the allegations leveled in the complaint have been denied and a prayer for dismissal thereof has been made.

5. After hearing both the parties, notice under Section 18 read with Section 11 of the Act was served upon the respondent through representative during the proceedings, to which, the respondent pleaded not guilty. The explanation furnished by the respondent was not found satisfactory and it was found that there was a need for further hearing into the complaint.

6. Both the parties were afforded an opportunity to file documents/evidence in support of their respective claims and the complainants relied upon copies of respective agreements as mentioned above, payment receipts and the correspondence between the parties.

7. On the other hand the respondent has also placed on file various documents and further placed reliance upon

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estimated CAM of CCC, Zirakpur and booklet chart in regard to maintenance charges.

8. I have heard the learned representatives for the parties and have gone through the record with their able assistance and have also perused the written submissions filed by them. By and large, the submissions of both the sides are on the lines of respective pleadings and it would not be appropriate to repeat the same here again. However, the same may be referred to in the later portion of this order.
9. It is an admitted fact that the SCOs of the complainants fall in the project registered with this Authority against registration No.PBRERA-SAS79-PC0010. The sale price of the units in question and payments thereof by the complainants is also not in dispute. As per the terms and conditions of the agreements executed in all the three cases, the possession was to be delivered within thirty six months from the date of execution of the agreement. The offer of possession has been made by the respondents on 05.06.2018 after receiving the PCC/OC. The

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complainants intend to stay in the project, therefore, the Authority can decide the matter in view of the order of the Hon'ble Appellate Tribunal dated 27.02.2019 passed in appeal bearing No.53 of 2018 titled as Sandeep Mann and another Vs. RERA and another and other connected appeals.

10. According to the respondent, the agreement for maintenance was executed between the parties and this fact has also not been denied. The maintenance charges mentioned in said agreement were Rs.3/- per square feet and now according to the respondents, the maintenance charges under various items comes to an amount of Rs.11.7/- per square feet, but, maintenance charges at the rate of only Rs.10/- per square feet are being claimed from the complainants. The complainant side is reiterating the agreed rate of maintenance i.e. Rs.3/- per square feet and it is alleged that it is arbitrary to demand Rs.10/- per square feet and there is no provision that advance maintenance charges are to be paid. According to the

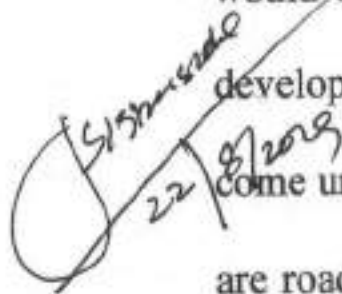
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complainants the demand is exorbitant and the maintenance charges could only be monthly and that too from the date of offer and the respondent cannot raise the demand of advance maintenance charges in an arbitrary manner. The side has referred to certain provisions. Similarly, the respondent side has also highlighted their claim by referring to various clauses in the agreement as well as separate agreement for maintenance.

11. In the main agreement, as per clause 3(a), it was agreed that the complainant would pay Rs.3/- per square feet of the super area per month in advance and refundable security Rs.25,000/- at the time of possession and the complainants/purchasers also undertook to become a member of the Maintenance Association/Society and also undertook to pay the maintenance charges accordingly from the date of possession. There is no evidence that the complainant was a party to any separate maintenance agency and had ever agreed to pay the maintenance charges as now being demanded by the respondent.

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12. Before proceeding further, it would be appropriate to have a glance over the legal position qua maintenance under this Act. The maintenance has not been defined under this Act. Similarly, essential services have neither been defined under the Act nor under the local laws/building laws prevalent in the State of Punjab and nor has been pointed out by either side. The maintenance in generality is the process in keeping something in good and proper working condition already in existence. The internal development work has been defined in Section 2(zb), which includes roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting etc. etc. This would be the duty of the promoter to effect the internal development work, but, their up-keeping is presumed to come under the head of maintenance. For example if there are roads, there are trees, this is the duty of the promoter and thereafter the residential welfare association to upkeep and maintain those services. Necessarily, the maintenance relates to the essential services and not those


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items which are decorative only to promote the sale and purchase of the real estate property at the cost of unit holders. In the instant case, admittedly an agreement to pay maintenance at the rate of Rs.3/- per square feet of the super area and on monthly basis. As per section 11(d), the promoter would be responsible for providing and maintaining the essential services on reasonable charges till the taking over of the maintenance of the project by the association of the allottees. Under Section 17 of the Act, the common area has to be transferred to the association of the allottees or the competent authority including the undivided proportionate title in the common areas to the association of the allottees at the time of executing the conveyance deed, meaning thereby, each unit holder has also a proportionate share in the common area and with that analogy the liability of maintenance would be to that extent only.

13. It is worthwhile to mention here that the respondent has placed on record a booklet showing the expenditure under

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various heads on the basis of which the maintenance charges are being claimed from the allottees including the complainants. The respondent has given the detail of estimation under various heads in a document already on record. The respondent has claimed maintenance charges at the rate of Rs.10/- per square feet as against Rs.11.07/- per square feet. The respondent side has failed to show as to whether it has ever hired any maintenance agency on competitive rate or the agency was of its own discretion claiming maintenance under various heads. It is also not clear as to which of the items included in maintenance charges of Rs.11.7/- per square feet necessarily fall under the definition of essential services. The cursory look on the booklet shows that the promoter is having a common team which includes Central Head, Chief Technical Officer, Chief Security Officer etc. etc. In mechanical team, there are multi-skilled technician, DG operator, AC technicians, lift operator, plumber cum pump room operator, fire technician, STP operator etc etc. In

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housekeeping, housekeeping supervisor, housekeeping boys, machine operators etc etc and in security team, security supervisors, guards etc and in PM team, assistant manager, admin/helpdesk executive etc. There are other heads which relate to recurring expenses items including stationery. Now, the question arises whether for such services, an allottee could be burdened or not. Essentially the answer should be no, unless it relates to the very essential services. It appears that the more stress of the promoter is to promote his own real estate, which he cannot do at the cost or expenses of the allottee. There is no solid evidence on the file from which it could be gathered that the maintenance essentially comes to Rs.11.7/- per square feet. It is also very surprising that the promoter has claimed only Rs.10/- per square feet, whereas in the original maintenance agreement it is Rs.3/- per square feet. The agreement admittedly executed

between the parties is dated 09.10.2015 in first complaint, dated 10.03.2015 in the second complaint and dated

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30.04.2016 in the third complaint and the relevant clause is article 3. The Bench is also aware that the price of the articles including essential items is rising high and at present it could be neither Rs.3/- per square feet nor it could be Rs.11.7/- per square feet. The just and appropriate maintenance charge may be fixed at Rs.7/- per square feet, which may further be subject to increase or decrease at the actual expenditure on the existing essential services of the promoter/RWA as the case may be. Therefore, the allottees/complainants will have to pay maintenance charges at the rate of Rs.7/- per square feet per month. As the promoter or the association has to make payment under fixed heads of services, therefore, it would be appropriate that the quarterly advance maintenance may be charged from the allottees/complainants at the above said rate i.e. Rs.7/- per square feet.

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14. Now, it would be appropriate to have a glance on the performa prescribed for agreement for sale provided in the Punjab RERA Rules 2017. As per the provision of the

Act, including clause 7(3) of the model agreement, the allottee is liable to pay maintenance charges from the date of taking over of the possession. The allottee is duty bound to take possession within two months of the occupancy certificate. In this case the offer of possession was made to the complainants vide letter dated 05.06.2018 offering possession w.e.f. 05.07.2018. So, two months for taking the possession by the complainants expired on 04.09.2018. Therefore, the allottees/complainants would be liable to pay maintenance charges w.e.f. 04.09.2018 (i.e. after expiry of two months from the offered date for possession i.e. 05.07.2018 vide letter dated 05.06.2018).

15. As per the terms and conditions of the agreements executed between the parties, the possession of the SCOs was to be delivered to the complainants within 36 months from the date of execution of the agreements in respective complaints. In complaint titled Anita Juliet Singh Vs. Citi Centre Developers, Chandigarh, the agreement was

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executed on 09.10.2015. The possession was to be delivered in this case by 08.04.2018 (by way of counting 36 months from date of execution of the agreement). In the second complaint titled as Anil Vivan Singh Vs. Citi Centre Developers, Chandigarh, the agreement was executed on 10.03.2015 and the possession of the SCO in question was to be delivered by 09.09.2017. In the third complaint titled as Vandana Singh Vs. Citi Centre Developers, Chandigarh the agreement is dated 30.04.2016 and possession of the SCO was to be delivered by 29.10.2018. The possession of the SCOs in all the cases has been offered vide letter dated 05.06.2018 w.e.f. 05.07.2018. In this manner, the complainants were bound to take possession within two months i.e. till 04.09.2018 and till that date they were entitled to interest from the respective due dates for delivery of possession in all the three cases. As such, the complainants of two cases

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 Schedule:-
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Sr. No.	Particulars of case	Entitlement	Rate of interest
1.	Anita Juliet Singh Vs. Citi Centre Developers, Chandigarh	w.e.f. 08.04.2018 till 04.09.2018	Simple interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% per month.
2.	Anil Vivan Singh Vs. Citi Centre Developers, Chandigarh	w.e.f. 09.09.2017 till 04.09.2018	Simple interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% per month.

16. As far as the third complaint titled as Vandana Singh Vs. Citi Centre Developers, Chandigarh is concerned, the possession was to be delivered till 29.10.2018, but, the offer has been made prior to that vide letter dated 05.06.2018 w.e.f. 05.07.2018. As such, there being no delay in delivery of possession in this case, the complainant Vandana Singh is not entitled to any interest.

17. As a sequel of above discussions, all the three complaints are partly accepted and it is ordered as under:

- i) The complainants will pay the maintenance charges only to the tune of Rs.7/- per square feet w.e.f. 04.09.2018 (i.e. after expiry of two months from the offered date for possession*

i.e. 05.07.2018 vide letter dated 05.06.2018)

and the respondent shall be entitled to charge

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quarterly maintenance charges at this rate from the complainants.

ii) The complainants of the following two complaints shall be entitled to interest for the delay in delivery of possession as per following schedule:

Sr. No.	Particulars of case	Entitlement	Rate of interest
1.	Anita Juliet Singh Vs. Citi Centre Developers, Chandigarh	w.e.f. 08.04.2018 till 04.09.2018	Simple interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% per month.
2.	Anil Vivian Singh Vs. Citi Centre Developers, Chandigarh	w.e.f. 09.09.2017 till 04.09.2018	Simple interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% per month.

However, the complainant in the third complaint titled as Vandana Singh Vs. Citi Centre Developers, Chandigarh shall not be entitled to any interest as there is no delay in delivery of possession in the said case. Each of the complainant is also awarded an amount of Rs.25,000/- as

litigation expenses. The respondent is directed to pay the amount on account of interest to the complainants in first two complaints within sixty days from the date of this order and litigation expenses to all the complainants

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within said period. A copy of this order be supplied to the parties under rules and copy be also placed on each of the files of other connected complaint cases. File be consigned to record room after due compilation.

Dated: 22.08.2019

(J.S. Khushdil)
Member
Real Estate Regulatory Authority

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