

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

Tr. GC of M-II/1519/File No. 25-M(SG)

GC 14092019

Date of Filing: 05.11.2019

Date of Decision: 14.07.2020

PBRERA-SAS79-PR0316

Ashok Mair R/o 935, Sector 7, Panchkula, Haryana -134109

...Complainant

VERSUS

M/s. Green Valley Heights, Near Sector 20, Panchkula, Village Kishanpura, Zirakpur,
SAS Nagar, Punjab -140603.

...Respondent

Present: Complainant alongwith Ms. Naveen Malik, Counsel.
Sh. Gagan Kohli, Counsel for the respondent.

ORDER

Complaint was filed on 5th November, 2019 by Sh. Ashok Mair (hereinafter referred as "Complainant") against M/s. Green Valley Heights (hereinafter referred as "Respondent") in respect of Apartment No. 208 measuring 1835 sq. feet. at 2nd Floor, Tower No. 8, Green Valley Heights, Village Kishanpura, MC Zirakpur. The total sale consideration of the apartment was Rs.33,23,185/- and as per Clause No.17 of the agreement dated 28.09.2011, the respondent was to offer the possession within 36 months from the date of agreement. On 12.07.2016 he paid the final amount of Rs.97,068/- clearing all dues totaling to Rs.35,49,560/- and the possession of the flat was handed over to him 21.07.2016. The complainant alleged that the respondent compelled him to take possession of incomplete flat and promised to complete the flat within one month but same has not been done till date. The possession of the flat was handed over to him on 21.07.2016 instead of 27.09.2014 with an alleged delay of 33 months. He also alleged that the respondents had charged Rs. 50,000/- for providing UPVC windows, Gas pipe and AC wiring etc., which they have not provided in a proper manner and the respondent is liable to return the same to him.

Accordingly, the complainant filed the present complaint seeking the following reliefs:-

*"Interest on delay of handing the possession of the flat:-
Rs.10,64,008/-*

- a. *UPVC Window Charges 30,000/-*
- b. *Gas Pipe Charges 5,500/-*
- c. *Ac Wirings 14,500/-*
- d. *Cost of litigation 15,000/-*
- e. *Mental agony and physical harassment 50,000/-...*"



This complaint was initially entrusted to Sh. J.S. Khushdil, then a Member of the Authority but was transferred to this bench on account of his retirement.

On 09.03.2020, the counsel for the respondent submitted one set of reply to this bench with a copy to the counsel for the complainant. On 23.06.2020, counsel for the complainant made a statement that she is not filing any rejoinder to the reply and requested to argue the matter. Today, the case was listed for arguments. Both the complainant and respondent have been heard at length and the contents of the complaint and the reply of the respondent have been thoroughly examined and the following is observed:-

1. As per Section 18 (1) Para 2 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'Act'), which is reproduced below, the allottee is only entitled for interest for every month of delay till the handing over of the possession and is not entitled for any compensation.

“Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

Hence, the relief sought by the complainant in respect of mental agony & physical harassment cannot be granted as per the provisions of the Act.

2. The counsel for the respondent argued that no cause of action has arisen after the notification of the Act as the entire payment in respect of the apartment was made on 12.07.2016 and possession was handed over to the complainant on 21.07.2016 and now the complainant cannot seek any relief under the Act as the same cannot be applied retrospectively. The counsel for the complainant argued that the Act is applicable with retrospective effect and the relief can be granted.

The Hon'ble Bombay High Court in the case titled as **Neelkamal Realtors Suburban Vs. The Union of India and 2 Ors in Writ Petition No. 2737 of 2017 (D.O.D. 6th December, 2017)** in Para 55 of the judgment has held as under:-

“55. It was submitted by the learned Senior Counsel that the retrospective or retro-active law is one which takes away or impairs vested or accrued rights [Virender Singh Hooda v. State of Haryana (Supra) - para 33]. The proviso to Section 3(1) of RERA provides that the projects which are ongoing on the date of commencement of RERA and for which completion certificates have not been issued required registration. Under the said provision, the projects which are already completed are not affected. No vested or accrued rights are being affected by the RERA. The obligations imposed by RERA applied prospectively

i.e. after the commencement of RERA. The counsel has referred to para 69 of the affidavit-in-reply filed by the Union of India in support of the submissions, wherein it was averred that promoter is entitled to provide new timelines for project completion. The obligations imposed and consequences for breach of such obligations under RERA are all prospective in their operation. It is not made applicable to past acts which have been completed. It merely relied on continuing acts, although their commencement was antecedent in point of time. Therefore, only a part of the requisites for action under RERA are antecedent to the coming into force of RERA.”

This issue of the applicability of the Act retrospectively or prospectively has been decided by the Full Bench of this Authority in the case titled as **Bikramjit Singh and others Vs. State of Punjab through Principal Secretary, Department of Housing and Urban Development, Punjab and 5 others in Complaint No.3 of 2017 (D.O.D. 13.12.2017)**. The Authority held that the following conditions must be fulfilled while deciding the maintainability of complaints where cause of action arose prior to enforcement of the Act.

“Such complaints will be maintainable if the following 3 conditions are fulfilled:-

- 1. The alleged violation, though commencing before the enforcement of the RERA Act, must be continuing till date.*
- 2. The alleged violation must also constitute a contravention of the RERA Act and the rules and regulations made thereunder.*
- 3. 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.*

Only if all the three conditions are fulfilled, and the onus would be on the complainant to prove these, would any alleged violation that took place before the coming into force of this Act be considered by this Authority.”

In this case, the agreement was executed on 28.09.2011 and the approximate time for offering possession was 27.09.2014. However, the respondent offered the possession of the flat after payment of all installments due from the complainant. The complainant took possession of the apartment on 21.07.2016 and is in continuous possession. A period of 4 years has elapsed since taking possession of the apartment which was prior to the date of the notification of the Act on 01.05.2017. The alleged violations are not continuous in nature after the notification of the Act. Hence, the provisions of Act and Rules

made thereunder do not apply in the present case. Further, the principle of "Estoppel" shall apply in this case as the complainant made all the payments in 2016 and took possession without raising any protest and now after 4 years, the issues of delay and extra charges cannot be raised.

4. The counsel for the complainant argued for refund of following payments made by the complainant:-

- a. UPVC Window Charges 30,000/-
- b. Gas Pipe Charges 5,500/-
- c. Ac Wirings 14,500/-
- d. Cost of litigation 15,000/-
- e. Mental agony and physical harassment 50,000/-

The counsel for the respondent clarified that the charges in respect of the above-mentioned works were relating to extra works done on the request of the complainant. He explained that all doors and windows are UPVC but additional wire-mesh doors were provided on the specific request of the complainant which were not part of the original specifications. Similarly, gas pipe and additional AC wirings were not within their original scope of work.

Based on the above, it is held that this complaint is not maintainable as no cause of action has arisen subsequent to the notification of the of the Real Estate (Regulation & Development) Act, 2016 which came into being 01.05.2017. The complainant is in peaceful possession of his apartment w.e.f. 21.07.2016 and no alleged contravention/violation of the act took place after the notification of the act or arose before the notification which is in continuation even after 1st May, 2017 i.e. the date on which the Act was notified. Similarly, the refund of amount paid for additional works carried by the respondent has no basis as it was over and above the original specifications as agreed upon between both the parties. The complaint is devoid of any merits and is accordingly dismissed. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent.

Chandigarh
Dated: 14.07.2020


(SANJIV GUPTA)
Member
RERA, Punjab

14/07/20