

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

Complaint No.GC 1193 of 2019

Date of Institution :10.04.2019

Date of Decision: 18.08.2020

Parvesh Bansal s/o Shri Prem Prakash Bansal, House No.124, Sector
2A, Adarsh Nagar, Mandi Gobindgarh, Fatehgarh Sahib, Punjab
147301

...Complainant


Versus

1. Bharat Mittal, Authorised Signatory, M/s Sushma Buildtech Limited; Unit No.B-107, Business Complex, Elante Mall, Ist Floor, Industrial Area, Phase-1, Chandigarh 160002
2. Sushma Buildtech Limited through its Managing Director, Plot No.381, Industrial Area, Phase-1, Chandigarh-160002

.... Respondents

Present : Shri Gaurav Gupta, Advocate for the complainant
Shri Sanjeev Sharma, Advocate for the respondents

ORDER

The complainant Shri Parvesh Bansal booked an apartment (No.1701, measuring 2250 sq. ft) in the project 'Chandigarh Grande' being developed by the respondents at Zirakpur. The allotment letter was issued on 01.12.2014 and the Apartment Buyer's Agreement was

executed on 13.12.2016. As per this latter document, possession of the unit was to be handed over within 6 months i.e by 13.06.2017. Since possession has not yet been delivered the complainant has initiated the present proceedings under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act). It is further alleged in the complaint that basic sale price of the apartment was Rs.70.00 lakhs and the total price including Preference Location Charges etc. was Rs.71,67,500/-. As against this a sum of Rs.62.50 lakhs had already been paid by the complainant between October 2014 and August 2015. The relief sought in the complaint is the delivery of possession of the apartment and payment of interest for the period of delay in handing over possession.

2. Notice of the complaint was served upon the respondents. The reply was filed on 01.08.2019. Subsequently, 2 more applications dated 07.11.2019 and 17.12.2019 for placing additional documents on the record were allowed in favour of the respondents. Three legal issues that have been raised in the reply may be noted first, as follows:

- i. it is submitted that the Authority did not have the power to order payment of interest to the complainant and this could only be exercised by the Adjudicating Officer;
- ii. the complaint could not be heard by a single-Member Bench of the Authority; and

- iii. that there was a clause for resort to arbitration in case of any disputes between the parties in the Apartment Buyer's Agreement, and hence the jurisdiction of this Authority was excluded.

On merits, it has been pointed out that the complainant had entered into the Apartment Buyer's Agreement dated 28.12.2016 of his free will and was accordingly bound by its terms. As per this Agreement he was to be paid compensation of Rs.5/- per sq. ft per month for any delay in handing over possession of the unit beyond the agreed date. This Agreement was executed before the Act came into force and was binding between the parties. It is also further submitted that the complainant could not avail the relief and benefits of his own choice, in that he could not seek enforcement of the clause in the Agreement which provided that possession would be delivered by 12.06.2017 while at the same time saying that the delay in handing over possession should be rectified by the payment of interest rather than by payment Rs.5/- per sq. ft per month as mentioned in the Agreement. It was further pointed out that the complainant was a habitual defaulter and had delayed the payment of instalments at various occasions. It was finally submitted that the Tower in which the complainant's apartment is located is nearing completion, and that possession is likely to be offered shortly.

3. Arguments were heard on 07.07.2020. On behalf of the complainant Shri Gaurav Gupta contended that the violation of the

Act in terms of delay in handing over possession was established on the record and hence the complainant was entitled for compensation by way of interest at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017. He also submitted that the complainant had waited a long time for realization of his objective of owning the apartment and hence the respondents should be directed to ensure delivery of possession at an early date. On the other hand Shri Sanjeev Sharma, Counsel for the respondents reiterated the submissions made in the written reply and contended that the relief sought were misplaced since the complainant was bound by the terms of the Agreement. Under this Agreement the complainant was not entitled to the payment of any interest but only the fixed compensation. He further submitted that if at all the respondent was held to be liable to pay interest then it should only be from the date of enforcement of the Act; and the fixed compensation was payable for the period prior to this.

4. The rival contentions have been considered carefully and it would be appropriate to deal with the legal submissions first.

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i. The first such contention raised is about the Authority's jurisdiction. It is however noted that this case is squarely covered within the Proviso to Section 18 of the Act which envisages such a situation in which there is a delay in handing over possession, but the allottee wishes to continue in the project and only seeks interest for the period of delay. As per

the judgement of the Appellate Tribunal in 'Sandeep Mann and others Vs Real Estate Regulatory Authority' (Appeal No.53 of 2018 and connected appeals) this issue is within the jurisdiction of the Authority. Regarding the second objection about lack of competence of a single-Member Bench it is no doubt true under Section 20 of the Real Estate (Regulation and Development) Act, 2016 the Authority is to consist of a Chairperson and at least 2 full-time Members. However, in my view this does not mean that every single act of the Authority has to be performed collectively by these functionaries. In fact Section 81 clearly provides for delegation of the Authority's powers to any Member or officer of the Authority or any other person. This Section reads as under:-

"81. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary."

Further, the Authority has framed the Punjab Real State Regulatory Authority (Procedure for Handling Complaints and Related Matters) Regulations, 2017. These Regulations have the force of law. Under these Regulations complaints are

generally to be heard by a single-Member Bench. Regarding the last objection of existence of arbitration clause, this contention has only to be noted to be rejected. The National Consumer Disputes Redressal Commission in its order dated 13.07.2007 in the case of Aftab Singh Vs. EMAAR MGF Land Ltd. and Anr. decided that disputes relating to the real estate sector were essentially non-arbitrable. Hence, the existence of an arbitration clause would not exclude the jurisdiction of this Authority. This view was upheld by the Hon'ble Supreme Court, and has been followed by the Authority in a number of cases. Thus the legal issues raised about the maintainability of the complaint are held to be devoid of merits and are rejected.

5. Coming to the merits of the case it is now settled law that even if there is a clause providing a fixed rate of compensation for the delay in delivery of possession it cannot be used to defeat the demand for payment of interest in case of such delay. The Hon'ble Supreme Court has in '*Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan*' (Civil Appeal No.12238 of 2018) held that provisions of an Agreement which bound the buyer to pay a higher rate of interest in case of any default but obliged the promoter to pay only the fixed compensation in such an eventuality was bad in law and could not be sustained. This is fully applicable to the present case since as per the Agreement the complainant was liable to pay interest @24% compounded monthly in case of any delay in payment, while the respondents were only to pay Rs.5/- per sq. ft. per month for

delay in handing over possession. This fixed compensation works out to Rs.1.35 lakhs per year which is less than of 2% of the total amount deposited by the complainant. Thus, the contention that the allottee can only to be paid the fixed compensation stipulated in the Agreement cannot clearly be upheld. The respondents are therefore liable for payment of interest for the period of delay. In this context Shri Sharma's contention that interest should be payable only for the period after the commencement of the Act is also not tenable. One sided agreements like the present one have been held to be unlawful by the Hon'ble Supreme Court on the basis of equity and not on the ground that their provisions are in violation of the provisions of the Act. It is therefore clear that any provision to this effect in the agreement cannot be given effect to at all. Coming to the second relief demanded by the complainant i.e the early delivery of possession, it is to be noted that the date of completion of the project as agreed to with this Authority is 26.07.2022. The respondents cannot be compelled to deliver possession of the unit before this date though, of course it has to keep paying interest till the possession is actually delivered.

6. As a result of the above discussion, the complaint is accepted. It is ordered that the respondents shall pay interest at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 as applicable from time to time to the complainant with effect from 12.12.2017 (considering the 6 months grace period allowed in the Agreement) till the date of actual delivery

of possession. The amount already paid to the complainant by way of monetary compensation for the delay is allowed to be set off against the interest due to avoid his unjust enrichment. The complainant in turn will be bound to take over possession within 2 months of it being offered after obtaining the Completion Certificate.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab