

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

Complaint No.1437 of 2019  
Date of Institution : 31.10.2019  
Date of Decision: 15.09.2020

Kapil Goyal s/o Lt.Col.Ramesh Chander Goyal (Retd.), r/o Flat F-1,  
First Floor, Plot No.82, Parasvanath Colony, Nirman Nagar, Jaipur -  
302019

...Complainant

1. Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan,  
16 Kasturba Gandhi Marg, Central Delhi, Delhi 110001
2. Sushil Ansal r/o Vishranti, 26 Feroze Shah Road, New Delhi -  
110001
3. Pranav Ansal r/o Vishranti, 26 Feroze Shah Road, New Delhi -  
110001

... Respondents

Present : 1. Complainant in person  
2. Shri Rajiv Bhatia, Advocate for the respondents

**ORDER**

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondents alleging delay in delivery of residential plot no. B-40 in the real estate project 'Golf Links-II' developed by respondent no.1 at Sector 116, Mohali. As per the complainant, he had paid a sum of Rs.10,62,500/- being 25% of the basic sale price on 09.04.2012. The allotment letter was issued on 23.07.2012 and the Plot Buyer Agreement was executed on 25.07.2012 with a copy handed over to the complainant on 27.08.2012. It is noteworthy that this Agreement (Annexure-4 with the complaint) does not indicate the date on which it was executed. The possession of the plot was to be handed over within 36 months (30 months + 6 months' grace period) by the respondents but the

AKS

same had not been delivered till now. The main reliefs sought in the complaint are early delivery of possession, payment of interest for the period of delay in handing over possession, and refund of excess amount already paid by the complainant. Other reliefs claimed include reimbursement of out-of-pocket expenses incurred by the complainant in the litigation, compensation for income foregone and payment of litigation costs etc. It may be noted that allowing such relief (the latter bunch) however is not within the purview of this Authority.

2. Notice of the complaint was served on the respondents. In the reply it has been contended that the complaint was an abuse of process of law. It is further stated that the Buyer Agreement allowed the respondents 36 months for delivering possession and this period was to run from the date all requisite sanctions, approvals, clearances etc. were received from the Government and was also subject to *force majeure*. It is also submitted that time was not of the essence of the contract and hence there was no occasion for the respondents to be penalized for any delay in delivery of possession. It is further submitted that the plot in question was ready for possession. The Completion Certificate for the project had also been applied for and it was likely to be issued in the next 2-3 months. Possession would be handed over to the complainant thereafter. It is finally contended that any delay in handing over possession could be compensated only as per the terms of the Agreement.

3. The matter was heard through video conferencing on 25.08.2020. Both sides have submitted written arguments in

support of their contentions also. In his written arguments the complainant has reiterated the contents of the complaint and highlighted the long delay in handing over possession. He has also given details of excess amount allegedly charged by the respondents, and contended that action under Section 69 of the Act should also be initiated against the respondents. On the other hand in the written arguments submitted on behalf of the respondents, a plea totally contrary to the contents of the reply has been raised. In the written submissions it has been contended that the possession of the plot was offered to the complainant on 28.03.2013. Further, under its Agreement with the Government of Punjab the respondent no.1 had been exempted from the provisions of Punjab Apartment and Property Regulation Act, 1995 and was not required to obtain a Completion Certificate for the project before offering possession to the complainant. Hence the offer of possession in March 2013 was valid and binding on the complainant and there was no basis to the present complaint, it is contended.

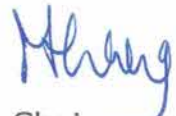
4. The rival contentions have been carefully considered. It is noteworthy that the contentions regarding payment of money and the date of execution of various documents as alleged by the complainant have not been rebutted by the respondents in the reply. The only contention in the reply is that the respondents were not obliged to hand over possession within 36 months of the date of execution of the Agreement but only to endeavour to do so. It had also been committed that possession was likely to be offered shortly. In view of this clear stand in the reply, the plea in the

written arguments that valid possession had already been offered on 28.03.2013 cannot be sustained. The complaint has to be decided on the basis of the pleadings and new contentions and arguments which are totally contrary to the pleadings cannot be allowed to be raised. It is also noteworthy that at the time of registration of the project with this Authority the date of completion of the project had been agreed as 31.12.2020, meaning thereby that the project is still incomplete. The delay in delivery of possession has not been denied – it is only claimed that under the Agreement the respondent was not obliged to hand over possession within the stipulated time but was only to endeavour to do so. On the other hand this Agreement specifies that in case of any default in payment of instalments by the buyer/complainant interest @ 20% per annum compounded quarterly would be payable. In view of the Supreme Court judgement in *Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghavan (Civil Appeal No.12238 of 2018)* such an Agreement clearly cannot be acted upon. It is therefore held that the respondents were obliged to hand over possession within 42 months of the Agreement, and hence delay in doing so is clearly established.

5. As a result of the above discussion the complaint is partly accepted and the respondents are directed to pay interest at the rate of 9.30% per annum (today's highest SBI's MCLR rate of 7.30% plus 2%) from 24.01.2016 till possession is actually handed over. The date of 24.01.2016 has been fixed as the expiry of 42 months from the execution of the Agreement between the parties – the Agreement mentions the time in which possession is to be

delivered as 42 months (36 months + 6 months' grace period), not 36 as claimed in the complaint. It is also directed that any delay in payment of instalments by the complainant would entail payment of interest only at the above rate i.e SBI's MCLR prevalent on the date of default plus 2%. Finally, the complainant would be liable to pay the basic sale price only for the actual area of the plot that is finally made available to him, since the claim that the area has actually been reduced has not been rebutted.

Announced.



Chairperson  
Real Estate Regulatory Authority  
Punjab