

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

Complaint AdC No.1287 of 2019  
Date of Institution :29.07.2019  
Date of Decision : 08.10.2020

Shyam Lal Dogra s/o Shri Sarwan Kumar, Flat No.744 (F.F.) Gillco Palms,  
Gillco Valley, Sector 115, Mohali 140301

....Complainant

Versus

Gillco Developers and Builders Pvt. Ltd. Gillco Valley, Sector 127, National  
Highway No.21, Mohali 140301

.... Respondent

Present : Complainant in person  
Shri Sanjeev Gupta, Advocate for the respondent

**ORDER**

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) seeking the payment of interest for the period of delay in handing over of an apartment in the project "Gillco Palms", Sector 115, Mohali to the complainant.

2. It is alleged in the complaint that the Agreement for Sale of the Apartment No.744 in the above project was executed on 29.06.2016. As per this agreement possession was to be handed over within 12 months (10 months + 2 months' grace period of the agreement) i.e by 28.06.2017. However, actual possession was delivered only on 06.04.2018 and hence the complainant was entitled to the payment of interest at the rate prescribed for the period of delay.

3. Notice of the complaint was issued to the respondent who has filed a detailed reply in the matter. It is firstly contended that the date for completion of the project was 31.08.2021 and hence the filing of this complaint at this stage was pre-mature. It has further been pointed out that as per the agreement dated 29.06.2016 the complainant was entitled only to the payment of interest at the rate of Rs.5/- per month per sq.ft. for the period of delay in delivery of possession of the apartment. The judgement of the Supreme court in the case '*DLF Home Panchkula Pvt. Ltd. Vs D.S.Dhanda*' (Civil Appeal 4910-4941/2019 @SLP (C) Nos. 3623-3654 of 2019 was cited to contend that in case of delay the consumer is entitled only to the consequences agreed to at the time of executing the Buyer Agreement. The judgement of the Bombay High Court '*Neel Kamal Realtors Suburban Pvt. Ltd. and anr Vs. Union of India and ors.*' (Writ Petition No.2737/2017) was also cited to contend that the agreement between the promoter and the allottee was to be given effect to. Further, the existence of an arbitration clause in the Buyer Agreement has been highlighted to contend that the jurisdiction of the Authority was accordingly excluded from hearing this complaint. It has finally been contended that under Section 21 of the Act the Authority is to comprise of a Chairperson and two Members, and hence a single-Member Bench of the Authority could not have the jurisdiction to adjudicate on this matter.

4. A rejoinder has been filed on behalf of the complainant. Apart from various orders of this Authority and the Real Estate Appellate Tribunal, Punjab upholding the claim for payment of interest, the judgement of the Supreme Court in Civil Appeal No.12238 of 2018 '*Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan*' has also been cited to contend

that any agreement whose terms are prima facie one sided, unfair, and unreasonable cannot be given effect to.

5. The complainant has submitted written arguments in favour of the complaint. Arguments on behalf of the respondent were heard on 15.09.2020 through video conferencing. Both sides have reiterated the contents of the complaint and reply respectively.

6. The respective submissions have been carefully considered. As far as the respondent's contentions about the complaint being pre-mature are concerned this argument held to be without merit. No doubt the date of completion of the project allowed at the time of its registration with this Authority is 31.08.2021. In normal circumstances the respondent could not have to be compelled to deliver possession before this date. In the instant case however the possession has already been handed over on 06.04.2018. It cannot therefore be held that the complaint is pre-mature since the transaction qua the complainant is already complete. Similarly, the contention that the complainant can only be compensated by the payment of Rs.5/- per month per sq. ft. for the period of delay is negated in view of the decision of the judgement of the Supreme Court in Civil Appeal No.12238 of 2018 '*Pioneer Urban Land and Infrastructure Ltd. Vs Govindana Raghavan*'. It is precisely a stipulation of this nature that was held to be unlawful in that case. A similar view has been expressed more recently by the Apex Court in the case '*Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Vs DLF Southern Homes Pvt. Ltd.*' (Civil Appeal No.6239 of 2019). Similarly, the contention about the existence of arbitration clause in the Buyer Agreement implying the exclusion of this Authority's jurisdiction is also rejected, in line with the decision of the Supreme Court in the case "M/s

*Emaar MGF Land Ltd. vs Aftab Singh*" (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos.23512-23513 of 2017). The last contention about lack of jurisdiction in the single-Member Bench has also to be negated in view of the Regulation 7 and 8 of the Punjab Real Estate Regulatory Authority (Procedure for Handling Complaints and Related Matters) Regulations, 2017 which allows for this course of action. These Regulations have the force of law and have to be followed. Thus none of the contentions in the reply have any merit. On the other hand, delay in handing over possession is established on record.

7. As a result of the above discussion, this complaint is accepted and the respondent is directed to pay interest at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) with effect from 28.06.2017 to 06.04.2018, within a period of 2 months from the date of issue of this order.

Announced

  
Chairperson  
Real Estate Regulatory Authority  
Punjab