

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

Complaint GC No.1534 of 2020

Date of Institution :12.03.2020

Date of Decision : 08.10.2020

1. Amit Pal Singh s/o Shri Prithvi Pal Singh
2. Prithvi Pal Singh s/o Sardar Saheb Singh

Both residents of Flat No.303/B, Saket Plaza, Jamal Road, Pulwan,
Patna, Bihar - 800001

....Complainants

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. Omaxe City, 111th
Milestone, Near Bad Ke Balaji Bus Stand, Jaipur Ajmer Expressway, Jaipur,
Rajasthan 302026

.... Respondent

Present : Shri Shubhnit Hans, Advocate for the complainants
Shri Munish Gupta, Advocate for the respondent

ORDER

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 against the respondent on its failure to deliver possession of the 3BHK residential flat, having super area of 1850 sq. ft., in the project 'The Lake' developed by the respondent at 'New Chandigarh' in District SAS Nagar.

2. It is alleged in the complaint that out of the agreed sale price of Rs.77,26,050/- a sum of Rs.63,55,223.77 had already been paid by the complainants. As per the Allotment Letter dated 14.03.2015 the possession of the flat was to be given on or before 42 months of its execution i.e by 14.09.2018. However, till today possession has not been delivered to them.

The complainants have accordingly sought directions to the respondent to handover physical possession, and to pay interest for the period of delay.

2. Notice was issued to the respondent and a detailed reply has been filed. Main objections have been taken to the effect that (i) there is an arbitration clause in the allotment letter, thereby implying that this Authority has no jurisdiction to entertain the present complaint; (ii) the period of handing over possession is 48 months as per clause 40(a) of the allotment letter and not 42 months as mentioned in the complaint; (iii) in case of failure to deliver possession within the stipulated time, the respondent would be liable to pay compensation only at the rate of Rs.5/- per month per sq. ft. for the period of delay, as per the agreement between the parties; and (iv) the date of completion of the project is July 2021 given at the time of registration of the project, and some delay had occurred due to the COVID-19 pandemic.

3. A rejoinder has been filed reiterating the contents of the complaint. Arguments were heard on 15.09.2020 through video conferencing. The contents of the complaint and reply were reiterated by Counsel during the hearing.

4. The rival contentions have been carefully considered. Regarding the clause of arbitration in the Agreement being used to exclude the jurisdiction of the Authority, this contention is 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). Further, it is held that the due date for delivery of possession was 14.03.2019 i.e 48 months (42 months plus 6 months' grace period) from the date of the allotment letter. It is delay beyond this period that has to be taken into account. The next contention raised on behalf of

the respondent is that compensation for the delay can be made only at the rate of Rs.5/- per month per sq. ft. and not by way of payment of interest to the complainants. This argument cannot be accepted as valid in the light of the Supreme Court orders in the cases of '*Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan*' (Civil Appeal No.12238 of 2018) and '*Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Vs DLF Southern Homes Pvt. Ltd.*' (Civil Appeal No.6239 of 2019). The present case is squarely covered within the ambit of these judgements. As per the allotment letter, while the respondent was obliged to pay only Rs.5/- per month per sq. ft for the period of delay, the complainants were required to pay penal interest at the rate of 18% and then 24% per annum in case of delay in making payments. Such one sided agreement cannot obviously be upheld. Counsel for the respondent has cited some earlier judgements of the Supreme Court including '*DLF Home Panchkula Pvt. Ltd. Vs D.S.Dhanda*' (Civil Appeal 4910-4941/2019 @SLP (C) Nos. 3623-3654 of 2019 and argued that terms of an agreement between the parties have to be given effect to. However, the case of '*DS Dhanda*' has been considered by the Supreme Court in its latest decision '*Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Vs DLF Southern Homes Pvt. Ltd.*' and it has been held that interest can be paid to the complainant who does not have to remain content with the fixed compensation provided in the agreement. The respondent's last contention is based more on considerations of equity since it is contended that the real estate sector had been going through a lean period for the last few years, and the situation has been aggravated by the emergence of the Covid-19 pandemic in the last few months. The argument is that because of these factors the respondent should not be directed to pay compensation higher than the fixed amount agreed to between the parties. This argument however, too cannot be accepted. The Covid-19 pandemic is

a reality and the Authority has through its Circular no.RERA/ENF-2020/20 dated 13.05.2020 granted some facilities to the developers of the real estate projects. Further concessions beyond this Circular cannot be extended in the course of these proceedings. In any case the current situation has effected large sections of the population, and is not confined to the real estate sector. Counsel for the complainants has also pointed out that if the possession had been delivered as the commitment made by the respondent such a situation would not even have arisen. Thus none of the contentions of the Counsel for the respondent have any merit while the delay in handing over possession is established on the record. However, since the time granted for completion of the project has not yet arrived, no direction for handing over possession within a specific period can be issued.

5. 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 14.03.2019 till the possession is delivered to the complainants. It is also directed that any delay in payment of any instalments by the complainants would entail payment of interest only at the above rate i.e SBI's MCLR prevalent on the date of default plus 2%. On their part the complainants will be bound to take possession within 2 months of it being offered, after obtaining the Occupation Certificate.

Announced


Chairperson
Real Estate Regulatory Authority
Punjab