

Suman Dhaundiyal
Vs.
Aman Singla

RERA Regn. No. PBRERA-SAS79-PR0096

Present: Ms. Manju Goyal, Advocate for the complainant.
Sh. Tushar Arora, Proxy counsel (for Sh. Amandeep Bindra, Counsel) for the respondent.

Matter heard through V.C.

The present complaint U/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'Act') was filed on 18th March, 2019 by Ms. Suman Dhaundiyal (hereinafter referred as "Complainant") against Aman Singla & Anr. (hereinafter referred as "Respondent") in respect to Unit No. 950, 9th Floor, Tower No. 4 in project titled as SBP Housing Park, Village Rauni, Tehsil Derabassi, SAS Nagar (Mohali). The allotment letter as well as Buyer's agreement was signed on 20.01.2013. The price of unit was BSP of Rs.25,50,000/-. Promised date for handing over the possession was 31.12.2014 plus 6 months extension period. The complainant opted for construction linked payment plan.

Now the complainant had alleged that despite making payment of approximately 95% amount, the respondent had offered her possession dated 05.05.2017 alongwith final demand letter without obtaining Occupancy Certificate/Completion Certificate and without considering the queries of the complainant, the respondent issued her termination/cancellation notice on 17.01.2019 and asked complainant to seek refund of the amount as per the terms and conditions of the buyer's agreement. Accordingly, the complainant filed the present complaint seeking following reliefs:-

"The offer of possession was issued on 5.05.2017 along with the final demand letter. The said offer of possession was contested by the complainant vide email dated 7.06.2017 asking for the occupancy /completion certificate. These documents are annexed herewith as Annexure C/VI(Colly). That the respondent served legal notice to the complainant on 10.12.2018 to make payment of Rs. 1,82,869/- within 15 days. The said legal notice was replied by the complainant on 18.12.2018 again asking the respondent about the completion/occupancy certificate. Without considering the queries of the complainant, the respondent issued Second Legal Notice dated 28.12.2018 demanding an amount of Rs.

182,869/-. The documents are annexed herewith as Annexure C/VII (Colly). The respondent issued termination/cancellation notice to the complainant on 17.01.2019 and asked the complainant to seek refund of the amount as per the terms and conditions of the buyers' agreement executed between the complainant/respondent. The said termination notice is annexed herewith as Annexure C/VIII. The project "SBP housing Park" is a RERA registered Project with Regn Number PBRERA-SAS79-PR0096, being an ongoing project. Therefore, the provisions of the Act would apply with respect to offer of possession, refund, interest and compensation etc in the present case. The respondent has not been able to offer possession of the allotted unit within the specified period as per builder buyer agreement and thus violated the provisions of the Section 18 of the Act. It is humbly prayed that the respondent may be directed to offer possession of the allotted unit after obtaining completion/occupancy certificate by setting aside the cancellation letter issued to the complainant."

In response to the complaint, the respondent submitted reply. Complainant mailed his written arguments on 14.10.2020, which was taken on record. Today matter came up for arguments. Both the parties made their submissions.

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.

The counsel for the respondent submitted that the project received Partial Completion Certificate (hereinafter referred as 'PCC') on 28.07.2017 in respect of different blocks including block, no. 4, in which the apartment of the complainant falls. Although the offer of possession of respondent was made in May, 2017, the same was a valid offer w.e.f. 28.7.2017, when the PCC was obtained by the respondent. The counsel argued that as per the allotment letter dated 20.1.2013, the possession was to be handed over by 31.12.2014 plus extension of 6 months in case of default by the allottee, which presupposes complete payment in respect of the agreed upon sale consideration, as per the payment plan mentioned in the Clause 2, which was construction linked plan. He argued that the complainant failed to make the payment in time and made certain payments with considerable delay and the last payment was made on 28.12.2016. He also referred to the photographs of the project which is complete in all respects and already inhabited by a large number of the allottees.

The complainant could not offer any justifiable grounds for the delay in making payments and failure to take possession despite the respondent being in possession of the PCC as early as July, 2017.

From the facts on record and the submissions made by both the counsels, the following can be concluded:-

- i. The complainant delayed making payments as per the construction linked payment plan agreed upon at the time of allotment letter dated 20.01.2013.
- ii. The complainant failed to take possession despite the promoter offering possession in May, 2017.
- iii. The complainant did not take possession of the apartment even after the PCC was issued on 28.07.2017, in respect of block no. 4, in which the apartment was located. This was despite the offer of possession being a valid offer of possession.
- iv. As per Clause 4 (a) (i) of the allotment letter, the respondent had promised to hand over the possession on before 31.12.2014. Further, as per the clause 4(a)(ii) the developer was entitled to a further extension of 6 months in case of any default or negligence attributable to the purchasers fulfilment of conditions of the agreement. In this case the complainant defaulted in making timely payments of the instalments. Accordingly, the date of offer of handing over/offer of possession shall be deemed to be on or before 30.06.2015.
- v. The complainant has made a prayer for seeking possession and setting aside the notice for cancellation of letter issued by the respondent 17.01.2019, unilaterally issued by the respondent
- vi. The counsel for the respondent agreed to set aside the notice for cancellation subject to the condition that the complainant deposits the entire balance amount alongwith interest for delay in making payments, as per the payment plan.


Based on the above, the following is ordered:-

- i. The complainant is directed to take possession of the apartment within 30 days of the issuance of this order, by making the entire balance payment.
- ii. The complainant shall be liable to pay interest for delay in making the payment of instalments as per the construction linked payment plan. This shall be made @ 9.30% (as per State Bank of India highest marginal cost of landing rate i.e. 7.30% + 2%).

- iii. The respondent shall be liable to make payment of interest @ 9.30% (as per State Bank of India highest marginal cost of landing rate i.e. 7.30% + 2%) for delay in offering possession w.e.f. 01.07.2015 till 27.07.2017 on the payments received from the complainant.
- iv. The interest payable by the both the respondent and complainant shall be adjusted towards the final payment due at the time of the handing over of possession
- v. No other relief is made out.

The complaint is accordingly disposed off. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent.

Chandigarh
Dated: 14.10.2020


(SANJIV GUPTA)
Member
RERA, Punjab

14/10/20