

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

GC No.15252020

Date of filing: 04.02.2020

Date of decision: 17.02.2021

Rajiv Kumar r/o #147, Ward No. 12, Sanaur, Patiala, Punjab

...Complainant

Versus

M/s. Gupta Builders & Promoter Pvt. Ltd., SCO No. 196-197, Ground Floor, Sector 34-A, Chandigarh-160022

...Respondent

Present:- Sh. Saksham Arora, Advocate for the complainant.
Ms. Deepinderjit Kaur, Advocate for the respondent.

ORDER

The present complaint was filed on 04th February, 2020 by Sh. Rajiv Kumar (hereinafter referred as "Complainant") against M/s. Gupta Builders & Promoters Pvt. Ltd. (hereinafter referred as "Respondent") alleging violation of Section 18 of the Act for non-delivery of possession of the unit booked by the complainant, in the respondent's project "GBP Rose Wood Estate Phase-II", within the period agreed upon/promised by the latter.

2. It is alleged in the complaint that purchase of Unit No. 1422, 1st Floor, 3BHK of the above project was finalized by the complainant with the respondent. The allotment letter & Apartment Buyer's Agreement were signed between the complainant and the respondent on 20.09.2018. As per Apartment Buyer's Agreement's Clause 9.1 (Possession), the respondent promised to deliver the possession by 30th July, 2019 with a reasonable extension of upto 3 more months. The total sale consideration of the Unit was Rs.29,25,000/- + GST (Basic Sale Consideration) + Rs.75,000/-

(Additional Cost/Charges i.e. Club Membership Charges, Power Backup Installation Charges + IFMS Charges), Totaling to Rs.29,25,000/- + GST as applicable). Before filing the present complaint, the complainant paid an amount of Rs.28,69,948/- as per details given below:-

Sr. No.	Date of payment	Amount paid
1	20.09.2018	150000.00
2	03.11.2018	2565992.00
3	04.01.2019	153956.00
TOTAL		2869948.00

3. The contention of the complainant is that despite payment of approx. 95% of the total sale consideration, he has not been offered possession of his unit till the time arguments were heard. Furthermore, he has alleged that he had taken a loan of 21,55,000/- on 18.09.2018 and a tri-partite agreement was made between the respondent, buyer and bank (Bank of Baroda) wherein the respondent had specifically stated that the said unit shall be delivered with all specifications, amenities and facilities on or before July, 2019. The Bank had also issued a notice for the delayed possession, to the respondent, but it had still not delivered possession to the complainant, it is contended. It may be noted that the tripartite agreement between the parties has actually been signed on 31.10.2018.

4. Now, the complainant has sought the following reliefs:-

"i. Promoter's Obligation: Physical Possession of the above mentioned unit complete in all respects at the earliest.

ii. REFUND Interest on Bank Loan: Rs. 16,848/Month towards Bank Loan EMI Paid by

the complainant (from the date of signing of contract).

iii. REFUND Interest on friendly loan for 2018-2019 and 2019-2020: Rs. 65,000/- year as interest on friendly loan (from the date of Signing of the Contract until the date of complete physical possession).

iv. Interest on Delay in Possession : Interest @11.5% plus 2% interest U/R 16 of RERA (from the date of Signing of the Contract),

v. Reimbursement for Rent Paid : Rs. 7040/month (from the date of Signing of the Contract), towards rent paid.

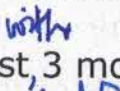
vi. Interest on Change/Alteration in Layout Plan: Rs. 3,00,000 towards breach of Contract.


vii. Medical Reimbursement: Rs. 90,000 towards doctors fee and medical bills , etc.

viii. Misc. Compensation: Rs. 90,000 towards legal expenses , mental harassment , agony etc."

5. Accordingly, the respondent submitted a short reply on 24.09.2020. Perusal of the reply reveals that the respondent has nowhere controverted the facts mentioned in the complaint in regards to the timely payments mentioned above by the complainant and the date of the promised offer of possession of the flat by 30th July, 2019 with 3 months as a reasonable extension. At the time of signing of apartment buyer agreement i.e. 20.09.2018, the respondent was fully aware of the factors which could contribute towards the delay in the

completion of the project. It was very much within the scope of the respondent to give a more reasonable date on completion of the construction, and defer the payments by the allottee but he still chose to offer a date by which he has failed to complete its construction and offer possession. The respondent could not satisfactorily explain the reasons for the same.

6. In view of the facts on record, it has been established that the respondent has failed to offer possession of the unit, till the date of this order, although the same was required to be done by 30th, October, 2019 at the latest, ^{with} 3 months granted as reasonable extension. 

7. The respondent in para 2 of his preliminary submission/objections of the reply invited attention to the decision of the Authority in **Bikramjit Singh and others Vs. State of Punjab through Principal Secretary, Department of Housing and Urban Development, Punjab and 5 others in Complaint No.3 of 2017 (D.O.D. 13.12.2017)** submitting that the following 3 conditions laid down in the above order be complied for any complaint under this Act before this Hon'ble Authority:- 

- "1. *The alleged violation, though commencing before the enforcement of the RERA Act, must be continuing till date.*
2. *The alleged violation must also constitute a contravention of the RERA Act and the rules and regulations made thereunder.*
3. *The issue should not have been decided, or be pending, in any forum/court before approaching this Authority. This is necessary to avoid multiplicity of litigation."*

In this case, since the apartment buyer agreement in Sub-Clause 9.1 (Delivery of Possession) of Clause 9 (Possession) stated that the possession shall be offered by 30th July, 2019 with an additional 3 months as a reasonable extension from the date of issue of apartment buyer agreement i.e. 20.09.2018, the cause of action in this case was continuing even after the notification of the Act. As such the objections raised by respondent whether the Act shall be applicable retrospectively or prospectively does not hold any ground.

8. Based on the merits of the case and admitted facts of the respondent as discussed above, the following is ordered: -

1. As provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest w.e.f. **01.11.2019** (*i.e. the date by which possession was promised to be offered on (30.07.2019) + 3 months for reasonable extension upto 30.10.2019*), as per State Bank of India highest marginal cost of lending rate (*i.e. 7.30%*)+ 2% *i.e. as prevailing at the time of this order i.e. 9.30%*, till the date of this order *i.e. 17.02.2021* on the amount paid by the complainant till 30.10.2019. This amount shall be paid within 60 days of this order.
2. In the second part, as provided under section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest, as per State Bank of India highest marginal cost of lending

rate (i.e. 7.30%)+ 2% i.e. as prevailing at the time of this order i.e. 9.30%, to the complainant from 18.02.2021, till the date of offer of possession of the flat to the complainant after obtaining the completion and occupation certificate for the unit in question. The same shall be adjusted towards the final demand notice at the time of offer of possession.


3. The complainant is not entitled to any separate compensation as provided in Section 18(1) as he has sought the relief of possession and not refund and withdrawal from the project.

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

Announced: 17.02.2021



**(Sanjiv Gupta)
Member**



**(Navreet Singh Kang)
Chairperson**



**(Ajay Pal Singh)
Member**