

**Before the Real Estate Regulatory Authority, Punjab, Plot
No.3, Block-B, First Floor, Sector 18A, Madhya Marg,
Chandigarh-160018.**

I.

Complaint GC No.1419/2019
Dated of Institution: 11.10.2019
Date of Order: 17.03.2021

Bee Gee Buildtech, SCF No.44-45, Ist floor, Sector 9,
Panchkula, Haryana - 134109

Complainant

Versus

Vipul Kapoor s/o Shri Vinod Kapoor, 2/2431, Kamal Niwas,
Court Road, Gill Colony, Saharanpur, Uttar Pradesh 247001

Respondent

II

Complaint GC No.1682/2020
Dated of Institution: 16.12.2020
Date of Order: 17.03.2021

Vipul Kapoor s/o Shri Vinod Kapoor, 2/2431, Kamal Niwas,
Court Road, Gill Colony, Saharanpur, Uttar Pradesh 247001

Complainant

Versus

Bee Gee Buildtech, SCF No.44-45, Ist floor, Sector 9,
Panchkula, Haryana - 134109

Respondent

Complaints under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

Present: None

ORDER

This common order will decide the above 2 complaints,
since similar issue of law and facts are involved in each of
these. A copy of this order be placed on each file.

2. The brief facts are that Complaint No.GC-1419 of 2019 was filed by the promoter of the project 'Palm Village' in Sector 126, Mohali on 11.10.2019. The main contentions in the complaint were that on the basis of an agreement between the complainant and the allottee a residential apartment (No.603 in Tower 'F') in the above project was allotted to the respondent for a basic sale price of Rs.43,36,900/-. This amount was to be paid in 3 installments (30% at the time of booking, 30% on the casting of 12th floor roof slab, and 40% at the time of offer of possession of the apartment). Subsequently, through an amendment to the original agreement area of the unit and the total price were slightly increased. The complainant had offered possession of the unit to the respondent initially in November 2018 and then subsequently in March 2019, but the latter had not yet taken possession of the apartment. Hence, the relief sought was for directions to the allottee to take possession of the apartment after clearing the amounts due from him, and also have the Conveyance Deed executed. In the reply filed on behalf of the allottee it was submitted that the complainant was a promoter and not an allottee and hence could not file a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act). It is further stated that though the allottee had booked a flat in the year 2012 the construction of the flat had started very late and hence the delivery thereof had also been delayed

unduly. It is also alleged that the promoter had unilaterally changed the area of the unit as well as its total price, and the allottee could not be forced to accept these changes. Subsequently, the promoter had executed an amendment to the agreement through unfair means. It was finally contended that the allottee was willing to take possession of the unit and it should be handed over to him. The reply of the allottee was rebutted in the rejoinder filed by the promoter in this case.

3. While the above complaint was pending at the stage of arguments the allottee Shri Vipul Kapoor, the respondent therein filed a complaint (GC No.1682/2020) dated 16.12.2020 against the promoter. The contents of his (Shri Kapoor's) reply to the complaint filed by the promoter (GC No.1419 of 2019) were reiterated and it was contended that there had been undue delay in the delivery of possession by the promoter. Accordingly, the relief sought was to direct actual delivery of possession and pay interest for the period of delay in terms of provisions of the Act. In the reply filed to this complaint, the promoter has rebutted these contentions and basically reiterated that they were willing to perform their part of agreement but the allottee was evading the payment of the amount due; and had lodged the present complaint only as an afterthought in an attempt to cover up his own default.


4. Arguments were heard on 26.02.2021. Both Shri Manoj Vashishtha, Advocate for the promoter and Shri Mrigank

Sharma, counsel for the allottee strenuously reiterated the contents of their pleadings in these 2 cases.

5. We have perused the record of the case. The facts of the case that emerge are as follows:

Shri Vipul Kapoor had submitted an application for allotment of an apartment in the project on 19.02.2014, and an agreement was entered into between the parties on 09.05.2014. In this agreement no date for handing over of possession of the apartment to Shri Vipul Kapoor was mentioned. Subsequently, however the parties executed an Adendum to Buyer Agreement on 20.01.2018 in which the following changes were made to the original agreement:-

- a. the area of the apartment would increase from 1850 square feet to 2000 square feet and the price increased from Rs.43,36,900/- to Rs.47,55,075/-, and
- b. the date of handing over of possession of the property would be 31.03.2019.

The promoter issued various reminders between 08.03.2018 and August 2018 asking the allottee to pay balance amount due on account of the transaction. Thereafter on 09.11.2018 (Annexure C-16 of the complaint GC No.1419 of 2019) delivery of possession was offered to the allottee. This offer was repeated on March 11, 2019 through email to which the allottee responded on 24.04.2019 stating that he was out of India for personal work and would be back in a couple of

months to finalize the transaction. Finally, a cancellation notice was issued on 04.06.2019 (Annexure C-20). The allottee made a payment of Rs.16,90,000/- in November 2019. However, the actual delivery of possession has not yet been effected and some amount is due from the allottee to the promoter.

6. The rival contentions have been carefully considered in the above factual matrix. It is seen that the Partial Completion Certificate (hereinafter referred to as PCC) covering Tower 'F' in which the apartment allotted to Shri Vipul Kapoor is situated was obtained on 01.03.2019. Therefore we hold that the offer of possession issued on 09.11.2018 was not in accordance with the law and hence not valid. However, a subsequent offer was validly made on 11.03.2019 after the receipt of the PCC. The allottee had responded to this offer in April 2019 and committed to clear the balance payments within 2 months and take possession of the unit. This has however still not been done. We further find that in terms of Addendum to Buyer Agreement possession of the unit was to be handed over by 31.03.2019. The offer of possession was made before this date i.e on 11.03.2019. Thus, there is no delay in delivery of possession though the default on part of allottee in not clearing the balance amount and taking possession of the unit is clearly established on file.

7. The objection of the allottee that a promoter could not file a complaint under Section 31 of the Act, as noted above in para 2, needs to be dealt with. We have considered the matter and find no substance in this argument. Section 31 (1) of the Act reads as follows:

"31. Filing of complaints with the Authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

....."

There is no restriction in this provision that a promoter of a project cannot file a complaint against an allottee. Any aggrieved person can do so against a promoter, allottee or real estate agent. In the current case the promoter has alleged contraventions of Section 19 of the Act on behalf of the allottee and is thus an aggrieved person. Thus the matter squarely lies within the ambit of Section 31 of the Act and the contention is held to be totally devoid of merit.

8. In view of the above the complaints are disposed off with the following directions:

- i. The offer of possession dated 11.03.2019 is valid.
- ii. The allottee/respondent would pay interest from a date 2 months after the date of offer of possession i.e from 11.05.2019, till the payment is actually

made. This interest would be on the amount in default as per the terms of the agreement and would be levied at the rate of today's SBI Highest Marginal Cost of Lending Rate plus 2% i.e @ 9.3% per annum.

iii. All formalities for handing over and delivery of possession should be completed by 30.04.2021.

This is a relief asked for by both parties.

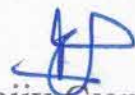
9. File be consigned to the record room and copy of the order be provided to both the parties free of costs.

Announced.


Dated: 17.03.2021



(Navreet Singh Kang)
Chairperson



(Sanjiv Gupta)
Member



(Ajay Pal Singh)
Member