

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

1. Complaint No.4 (a) of 2017
2. Complaint No.4 (b) of 2017
3. Complaint No.4 (c) of 2017

Date of Decision 05.06.2018

Gautam Uppal, son of Shri Ranvir Uppal, resident of House No.470,
Sector 6, Panchkula (Haryana)

....Complainants

Versus

M/s Country Colonizers Pvt. Ltd. through its authorised signatory,
Reg. office - P.O. Rayal and Silk Mills Adjoining Coca Depot,
G.T.Road, Chhehrta, Amritsar, Punjab 143105.

2nd address:

Corporate Office : A-25, Mohan Cooperative Industrial Estate, Main
Mathura Road, New Delhi 110044.

.... Respondent

Present : None

ORDER

RM
This order will decide the above three complaints – 4(a), 4 (b)
and 4 (c) of 2017 - since similar facts and identical points of law are
involved in each of these. A copy of this order may be placed on each
file.

2. Briefly the complainant alleges that he had purchased three
apartments in the real estate project developed by the respondent,

and entered into 3 Apartment Allottee Agreements dated 17.05.2013, 05.09.2012 and 11.07.2013 respectively. As per the agreements, the possession of the Apartment was to be given within 30 months with an extension of 6 months. The complainant had made due payments within the stipulated time frame, but the respondent not only failed to deliver possession of the apartments, but had not even completed the construction at the site. It was thus in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act). The complainant has sought refund of money deposited by him with the respondent along with payment of interest, and also compensation for the harassment caused to him.

3. Notice of the complaint was served on the respondent who put in appearance and filed a reply. In the reply, apart from some preliminary objections regarding the maintainability of the complaints it has been submitted as per clause 5.1 of Apartment Allottee(s) Arrangement, the respondent shall endeavour to complete the development of the project as far as possible within 36 months and there was no fixed date of completion; the complainant had failed to adhere to the payment plan; and that delay in construction had been caused by the failure of official agencies to complete the development works that would have facilitated the construction.

4. This Authority in the case "*Bikramjit Singh VS H.P.Singh (Complaint No.3 of 2017)*" held that complaints in which the cause of action arose before the commencement of the Act could be heard subject to the following conditions:-

- i. The alleged violations are continuing till date.

- ii. The alleged violations must constitute a contravention of RERA Act also.
- iii. The issue should have neither been decided nor be pending in any other Forum/Court.

These conditions are fulfilled in this case. Possession has not been handed over; delayed possession is a violation of the Real Estate (Regulation and Development) Act, 2016; and the complainants have given a declaration that this matter is not pending before any authority or a court of law. The complaint is therefore within the jurisdiction of this Authority.

5. The preliminary objections raised by the respondent have been rejected vide separate interim orders dated 10.04.2018, 01.05.2018 and 22.05.2018.


6. Arguments were heard on 30.05.2018. Counsel for the respondent submitted written arguments also.

7. Counsel for the complainant argued that the complainant had purchased three apartments and paid the total amount as per details given below :-

No. of complaint	Apartment allotted	Area of apartment	Total consideration as per agreement	Amount paid
4-a	707 Erica, First Floor	700 Sq.ft.	29,05,000.00	23,48,287.00
4-b	103, Erica First floor	1990 Sq.ft.	Rs.74,62,500.00	Rs.59,99,753.00
4-c	705 Tower Tulip, 7 th floor	594.5 Sq.ft.	29,05,000.00	Rs.22,65,490.00

Under clause 5.1 of these agreements, the respondent was to deliver possession of the apartments within thirty six months of the date of the agreement. However despite payment of substantial amounts in a timely manner, the possession has not yet been delivered. A legal notice had been served upon the respondent in January 2017, but had elicited no response. The complainant, therefore, had no choice but to file these complaints. Since the project had been delayed to a great extent, the complainant did not wish to retain the apartments booked by him; and it was accordingly contended that the amount deposited by the complainant may be refunded along with interest at the prescribed rate.

8. As mentioned in para 5 above, the following objections raised by the respondent at various times – including in the written arguments – have been dismissed by a series of interim orders:-

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- i. The complaint was maintainable only before the Adjudicating Officer and not before the Authority.
 - ii. The complaint was not maintainable because of the presence of an arbitration clause in the agreement.
 - iii. The matter was not covered under the Act since the complainant had not bought the apartments for his bona fide personal use.

In his oral submissions, respondent's counsel pointed out that clause 5.1 of the agreement was not binding upon them since it only mentioned that the respondent shall endeavour to deliver the possession within thirty six months and there was no binding commitment to this effect. He also contended that since the

development works surrounding the respondent's land had not been completed by Greater Mohali Area Development Authority, the respondent could not construct the building as per original schedule; and hence the defence of force majeure was available to the respondent. It was finally contended that the complainant was not entitled to refund of the money but only to the payment of damages @ Rs.5.00 per sq. feet per month for the period of delay in delivering possession. However the complainant had not claimed these damages, and hence had waived this relief also.

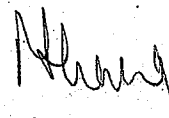
9. I have considered the rival contentions. It is clear that though the complainant has deposited substantial sums of money in respect of each of the apartments booked by him, however delivery of possession has still not been offered despite the passage of more than five years from the date of agreement. The justification sought to be put forth by respondent for this delay i.e the non completion of external development works is not tenable since the defence of force majeure is applicable only in case of acts of God. The complainant cannot be expected to wait indefinitely for the possession of the apartments booked by him, therefore, his request for withdrawing from the project and for refund of money is totally justified.

10. These complaints are accordingly accepted and the respondents are directed to refund the amount deposited by the complainant with interest to be paid from the date of deposit to the date of refund at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 i.e State Bank of India's

highest Marginal Cost of Lending Rate (as applicable from time to time) plus 2%.

11. The due amount should be paid to the complainants within a period of two months from the date of issue of this order.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab