

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

Execution No.74 of 2022 In
Complaint No.GC1494 /2019
Dated of Decision: 08.11.2023

1. Devendra Kaur w/o Manmohan Singh
2. Supneet Singh Kataria s/o Manmohan Singh Kataria
Both residents of House No.2189, Ground floor, Phase
10, Sector 64, SAS Nagar Mohali, Punjab, 160062

.....Complainants/applicants

Versus

ATS Infrabuild Private Limited, Sector 121, Near Verka Milk
Plant, SAS Nagar, Mohali, Punjab 160055

.....Respondent

Present: Shri SS Gill, Counsel for the complainants
Shri Hardeep Saini, Counsel for the respondent

ORDER

This application under Section 40 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act 2016) read with Rules 24 and 25 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules 2017) has been filed by the complainants/ applicants seeking the execution of the order dated 21.05.2021 passed by this Authority in GC No.1494 of 2019. Along with the execution application the complainants/ applicants has also attached a calculation sheet



showing the claimed amount of Rs.45,56,258/- from 31.03.2018 upto 30.06.2022.

2. Through that order the respondent was directed to pay interest as prescribed under Rule 16 of the Rules 2017 at the rate of 9.30% per annum with effect from 01.07.2018 till a valid offer of possession is made after obtaining the Occupancy Certificate.

3. Pursuant to notice issued to the respondent, Shri Hardeep Saini, Advocate, learned Counsel for the respondent appeared on 15.02.2023 and submitted his Power of Attorney. Thereafter a reply along with calculation sheet (Annexure R-1) showing the payable amount of Rs.45,94,214/- was filed by the respondent on 12.04.2023. In the reply it is stated by the respondent that facts mentioned in the Execution Application are contrary to the correct facts, and amounts, and the rate of interests mentioned therein are not true. It is further stated that the calculation sheet submitted by the complainants/ applicants is not as per the directions given by this Authority. The respondent has attached a calculation sheet showing the calculation of interests @ 9.30% per annum for the period from 01.07.2018 till 12.04.2023 and 22.10.2018 till 12.04.2023 and as per this sheet the payable amount by the respondent is Rs.24,65,791/- after deducting the outstanding amount of Rs.21,28,423/- from Rs.45,94,214/-.



4. When the matter was taken upon 04.10.2023 for arguments, learned Counsel for the complainants/applicants stated that the respondent has excluded the tax/GST from the amounts paid by the complainants/ applicants. Learned Counsel for the complainants/applicants has also filed a fresh calculation sheet duly signed by him claiming Rs.51,54,146.1 upto 15.04.2023. Learned Counsel for the respondent reiterated the contents of his reply and calculation sheet.
5. On 03.05.2023 learned Counsel for the complainants/ applicants was asked to submit his written submission within two weeks with a copy to opposite learned Counsel and learned Counsel for the respondent was to submit his written submissions within one week with a copy to opposite learned counsel.
6. Learned Counsel for the complainants/applicants has submitted his written submissions, reiterating the exclusion of Tax/GST from the amounts paid by the complainants/ applicants by the respondent in their calculation sheet. It is also specifically mentioned in the written arguments that possession has not been handed over as yet. He has also placed on record a copy of judgement passed in RERA Appeal no.95 of 2021 (O&M) along with connected Appeals by the Hon'ble High Court of Punjab and Haryana on 23.05.2022. In support of his contention for payment of interest on the entire



amount, he has referred to para 10 of the above said judgement (supra) which is reproduced hereunder:

"10. On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. **Such interest for every month of delay is payable on the entire amount paid by the allottee**(emphasis supplied). The interest has been defined in Section 2(z) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. **The interest shall be payable on the complete amount paid by the allottee to the promoter**(emphasis supplied). The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount of H-VAT, GST, EDC etc. under proviso to Clause (1) of Section 18 of the 2016 Act to the allottee. Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to develop his land into a colony is liable to pay the proportionate development charges. In other words, the liability to pay the amount is on the licensee (owner-promoter)"

7. Learned Counsel for the respondent has not submitted his written submissions.

8. As per interim order dated 26.07.2023, learned Counsel for the respondent sought one week's time to make the



payment and the matter was adjourned to 30.08.2023 and thereafter to 04.10.2023. On this date learned Counsel for the complainants/ applicants stated that the order dated 26.07.2023 has not been complied with by the respondent and the matter was heard and fixed for orders for today.

9. The rival contentions have been carefully considered. It is clear that the respondent has not complied with the order dated 21.05.2021 directing payment of interest and to deliver possession after obtaining the Occupancy Certificate. The complainants/ applicants had deposited different amounts from 01.07.2018 till 26.10.2018. Further, to seek interest in case of delay in delivery of possession, is statutory right granted to the complainants/ applicants by Section 18 of the Act, 2016.

10. Regarding the issue raised by learned Counsel for the respondent that the calculation sheet submitted by the complainants/ applicants is not as per the directions given by this Authority has no merit. Perusal of the calculation sheet submitted on 03.05.2023 (calculated interest upto 15.04.2023) duly signed by the learned Counsel for the complainants during the course of hearing is as per the order dated 21.05.2021 and there is no infirmity in the said calculation sheet. As such, it is held that the calculation sheet



of interest submitted by learned Counsel for the complainants on 03.05.2023 is in order.

11. Further, to controvert the deduction of tax from the amounts received from the complainants/ applicants, reflected by the learned Counsel for the respondent in their calculation Sheet (Annexure R-1), the learned Counsel for the complainants / applicants has placed reliance on para 10 of the RERA Appeal no.95 of 2021 (O&M) (supra) in which it is held that "**Such interest for every month of delay is payable on the entire amount paid by the allottee**"....."**The interest shall be payable on the complete amount paid by the allottee to the promoter**".

In view of the above law, the objection raised by the complainants/applicants is sustainable that the interest for every month of delay is payable on the entire amount paid by the allottee. Hence, the execution petition deserves to succeed and the complainants/applicants are entitled to the payment of interest on the entire amount.

12. The net result of the above discussion is that the objections raised on behalf of the respondent are without merit and the relief sought by the complainants/applicants deserves to be granted. This application is accordingly accepted and a direction for payment of Rs.57,67,890/- (as per calculation sheet attached with this order) is passed in favour




of the complainants/applicants and against the respondent. A Recovery Certificate be sent to the District Collector, SAS Nagar (Mohali) to effect recovery.

13. Registry is directed to put up the matter for issuing notice under Section 63 of the Act, 2016 for failure on the part of the respondent M/s ATS Infrabuild Pvt. Ltd. to follow the directions issued by this Authority in the order dated 21.05.2021 passed in GC No.1494 of 2019.

Announced
Dated:08.11.2023



(Satya Gopal)
Chairperson



(Ajay Pal Singh)
Member



(Rakesh Kumar Goyal)
Member

Execution No.74 of 2022 In
Complaint No.GC1494 /2019

Devendra Kaur w/o Manmohan Singh and anr.
Versus
ATS Infrabuild Private Limited,

08.11.2023

Present: Shri SS Gill, Counsel for the complainants
Shri Hardeep Saini, Counsel for the respondent

Vide separate order the execution application is
allowed.



(Ajay Pal Singh)
Member

(Satya Gopal)
Chairperson



(Rakesh Kumar Goyal)
Member