

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

Date of Decision 08.01.2019

Complaint No.GC-1048 of 2018

1. Parika Ganeriwal, d/o Shri Devki Nandan Ganeriwala,
House No.323, Advocate Enclave, Sector 49-A,
Chandigarh-160047.

....Complainant

Versus

Sandwoods Infratech Projects Pvt. Ltd. 1108, Arunachal
Building, 19, Barakhamba Road, New Delhi 110001

.... Respondent

Complaint No.GC-1049 of 2018

2. Kanisth Ganeriwala, s/o Shri Devki Nandan Ganeriwala,
House No.323, Advocate Enclave, Sector 49-A,
Chandigarh-160047.

....Complainant

Versus

Sandwoods Infratech Projects Pvt. Ltd. 1108, Arunachal
Building, 19, Barakhamba Road, New Delhi 110001

.... Respondent

Present : Shri D.N.Ganeriwal, Advocate for complainants

Shri Munish Gupta, Advocate for respondent.

ORDER

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The above complaints will be decided by a single order since identical points of law are involved in each of these. Even on facts the difference between the two cases, as the following table shows, is insignificant and does not affect the merits of the case at all:

Name of allottee/complainant	Size of allotted plot (Sq. ft)	Unit No.	Actual Cost	Amount deposited	Date of Buyer's agreement
Parika Ganeriwal	1325	172	41,80,000/-	43,98,288/-	28.05.14
Kanisth Ganeriwal	1325	169	41,80,000/-	42,90,666/-	27.10.14

2. It is the case of the complainants that they applied for one unit measuring 1325 Sq. Ft. each under a Subvention-scheme and were allotted Unit No.172 and 169 respectively. It was assured that the possession of the Unit would be handed over within 36 months with a grace period of 6 months, and all the equated monthly instalments (EMIs) were to be paid by the respondent till the possession is handed over. It is also alleged that the respondent had issued letter on 05.09.2017 that possession of the Unit was going to be handed over; however, no possession letter had yet been issued even though the complainants had already paid more money to the respondent than the actual cost of the units. The main relief sought by the complainants is that since the respondent had not delivered possession despite considerable delay, refund of entire payment made along with interest, and compensation on account of harassment and mental agony, should be allowed.

3. Notice of the complaint was served upon the respondent, who appeared and filed a reply. The following preliminary objections have been taken in the reply:-

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- i. The complaints were liable to be dismissed for non-joinder of necessary parties since in both cases the Unit had been allotted to two individuals but only one of them had filed the complaint. Similarly, the financing institution, Axis Bank Ltd., had not been made a party.

- ii. Jurisdiction of this Authority was barred, and the matter needed to be referred to arbitration. It may be noted that the respondent had submitted a separate application seeking that this Authority should refer the matter for arbitration. This was however, dismissed vide separate interim order dated 13.11.2018.
 - iii. The respondent had already offered possession to the complainants, and the complaints at this stage were totally misconceived.
 - iv. The complainants had concealed the fact that the respondent had acted in a bona fide manner, and had offered complementary Club Membership and 2 KVA Power Backup as a goodwill gesture towards the complainants.
4. On merits, it was pointed out that it was not a mandatory condition that the possession was to be handed over within 36 months with a grace period of 6 months, and the only commitment was that the respondent would endeavour to deliver the possession within this time. Further, the remedy for late delivery of possession was contained in the agreement itself wherein it was provided that respondent would pay Rs.5/-per sq. ft per month for the period of delay. It was further contended that the complainants were liable to pay only basic sale price but also other levies and charges thereon, and hence it could not be said that they had already paid more than the due amount. It was finally pointed out that when the possession of the Unit had already been offered the complainants' conduct in seeking refund of the amount deposited showed that they had invested money for only speculative purposes.

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5. As far as the preliminary objections raised by the respondent are concerned, same are without any merit. I do not find that the complaints suffers from non-joinder of necessary parties. Firstly there is no conflict of interest between two co-purchasers; and a complaint filed by one of them is maintainable under law. Further, a necessary party means a party without whose presence the matter cannot be adjudicated effectively. Thus, a financing institution like Axis Bank Ltd. is also not a necessary party because the dispute essentially is one between the complainants and the respondent. The objection at serial no.(ii) in para 3 above has already been rejected vide order dated 30.11.2018. The objection at serial no.(iii) forms part of discussion that follows; whereas any gesture of goodwill on the part of the respondent (objection at serial no.iv) cannot by itself be held to defeat the claim of the complainants.

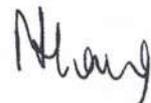
6. Coming to the merits of the case, it is seen that no doubt there has been delay in offering possession of the Unit to the complainants. In the ordinary course of things, complainants are entitled to seek refund of their money deposited. However, what is noteworthy is that respondent has offered possession of the Unit to the complainants; and allowing the complainants to withdraw at this stage would not be appropriate. After all, any real estate project is built largely with the money deposited by the allottees; and it is in the interest of the sector that the transactions that are near fruition are allowed to continue to their logical end. It is also relevant to note that at the time of registration of the project the promoter had been granted time till December 2021, and they cannot be forced to deliver possession before this date. However, in view of the fact that the

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respondent itself has offered possession, it must honour the promise; and it is directed that possession of the Units shall be handed over to the complainants by the end of February 2019. The complainants would be entitled for interest @ prescribed under 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%. The complainants would be entitled to the payment of interest from the date of deposit to the date of possession. However, the respondent would be entitled to set off the amount it has paid to the financing institution, against this interest amount. It is made clear that if possession is not handed over by end of February 2019, the complainants would be entitled to move this forum afresh for refund of the amount deposited by them.

7. The claim for compensation for harassment etc. has not been pressed.
8. The complaints are disposed off in the above terms.
9. A copy of this order be placed on each file.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab