

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

**1. GC No. 0314/2021
Date of filing: 10.08.2021**

1. Amandeep Kaur
2. Sukhwant Singh Bhatti
Both R/o #102, Sector 10-A, Chandigarh - 160011

...Complainant(s)

Versus

ATS Infrabuild Private Limited at 711/92, Deepali, Nehru Place, Central Delhi, Delhi - 110019.

...Respondent

**2. GC No. 0315/2021
Date of filing: 10.08.2021**

1. Rakesh Sehgal
2. Meena Sehgal
Both R/o #102, Sector 10-A, Chandigarh - 160011

...Complainant(s)

Versus

ATS Infrabuild Private Limited at 711/92, Deepali, Nehru Place, Central Delhi, Delhi - 110019.

...Respondent

Date of Decision: 31.05.2022

Present:- 1. Sh. Himanshu Raj, Advocate for the complainants.
2. Sh. Bahul Bunger, Advocate for Sh. Harsh Bunger, Advocate for the respondent.

O R D E R

A. BRIEF FACTS OF THE CASE:-

Since the above mentioned complaint(s) are based on same facts, cause of action against same promoter, pertaining to the same project, it is appropriate to dispose off these complaint(s) vide this common order. A copy may be placed in each file.

The above complaints are in regards to non-compliance of the orders and directions of Full Bench of this Authority, issued on 21.05.2021. In the order, the following directions were issued, to the respondent, for compliance.

“8. As a result of the above discussion the complaints are partly accepted and the respondent is directed to pay interest to the complainants @ 9.30% (today's highest SBI MCLR rate of 7.30% plus 2%), as prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, from 01.04.2018 (Complaint No. 1689 of 2020) and

01.07.2018 (Complaint No. 1554 of 2020) respectively till 11.10.2019."

The complainants have alleged that the above orders/directions have been duly communicated to the respondent, as he was present at the time of announcement of orders. Further, the orders have also been duly served to the respondent by the complainants.

2. The complainants also filed two separate caveat petitions U/s. 148-A before the Punjab Real Estate Appellate Tribunal (*hereinafter referred as 'REAT, Punjab'*) (Caveat Petition No. 69 of 2021) and before the Punjab and Haryana High Court (Caveat Diary No. 5365683) respectively. No appeals have been filed by the respondent till date.

3. That compliance of the orders passed by this Authority is the mandate of law. A violation and non-compliance shall attract the penal provisions of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred as 'the Act'*). In view of the non-compliance, the respondents are liable for imposition of penalty as provided U/s. 63 of the Act.

B. RELIEF SOUGHT BY THE COMPLAINANTS:-

4. The complainants have sought the relief of imposition of penalty, U/s. 63 of the Act, i.e. 5% of the total cost of the project, for deliberately not complying with the orders and directions of the Authority.

C. REPLY OF THE RESPONDENT:-

5. The counsel for the respondent moved an application for dismissal of complaint, being not maintainable, which was declined on 06.01.2022. He was directed to file his reply. The same was subsequently filed on 09.02.2022. In the reply, Respondent contested the complaints on following grounds:-

I. The complaints are liable for dismissal, being non-maintainable, as they have been filed U/s. 31 of the Act, read with Rules 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017

(hereinafter referred as 'The Rules'). Complaints U/s. 31, read with Rule 36, can be filed only in respect of any violation under the Act or the Rules and Regulations made thereunder and not for enforcement of order passed by this Authority, while adjudicating a complaint, filed in Form M.

II. That the mode and manner of enforcement of an order passed by a Authority is specifically provided U/s. 40 of the Act. It is well settled law that when the law prescribes a particular thing to be done in a particular manner then no other manner can be adopted.

III. The Authority, in its order dated 21.05.2021, did not quantify the amount payable and the same has to be subject matter of execution proceedings U/s. 40.

IV. That the complainants have failed to take recourse to get the orders executed in terms of Section 40 of the Act. In order to do so they need to file an execution petition u/s. 40 of the Act.

V. That Section 40 of the Act has to be read with Rule 25 of the Rules, which envisages the procedure to be undertaken, in case any orders of the Authority are not complied with. The complainants have not followed due procedure, as provided under the Act and the Rules.

VI. In terms of the order of the Authority, the complainants are entitled to the interest @ 9.30%, for delay in handing over possession, for the period from 01.07.2018 to 11.10.2019. In order ascertain the amount of interest, the complainants are required to submit a calculation sheet to the respondent company, which needs to be examined by them. Instead, the complainants have tried to skip this step and arm-twist the respondent, to yield to its unlawful demands.

VII. That the respondent had not violated any order/directions of this Authority. Accordingly, the complaints may be dismissed being not maintainable.

D. ARGUMENTS

6. The complaints came up for arguments on 17.05.2022. Sh. Himanshu Raj, Counsel for the complainants argued that the present complaints have been filed for contravention of Section 63 of the Act, for failure of the

respondent to comply with the orders and the directions of this Authority issued on 21.05.2021. This non-compliance is punishable by way of imposition of Penalty, for everyday during which such default continues, which may cumulatively extend upto 5%, of the estimated cost of the Real Estate Project, as determined by the Authority. This relief is distinct from the provisions of Section 40, read with Rule 25, which provides for a procedure to be followed by filing execution application for payment of interest or penalty or compensation imposed by the Authority or the AO, as the case may be. However, in the present case the complainants are not seeking the payment of the interest directed to be paid by the Authority vide its above order. He reserves the right to initiate execution proceedings separately. The present proceedings, if they succeed, will result in imposition of penalty which shall not be payable to the complainants and shall be credited to such an account as the State Government may specify, as provided U/s. 76 (2) of the Act. This will not amount to double enrichment of the complainants, as he will still remain entitled to only the interest, as per the directions of the Authority. He further averred that Section 31 encompasses any violation or contravention of the provisions of the Act or the Rules and the Regulations made thereunder, by any promoter, allottee or real estate agent. This section does not limit the scope of violation/contravention and no separate mechanism has been prescribed under the Act for dealing with offences under Chapter VIII of the Act. Similarly, Rule 36 also relates to any violation under the Act and the Rules and Regulations and thus the present complaints are maintainable and strictly as per the provisions of the Act. He argued in detail regarding the functions of the Authority as provided U/s. 34 with specific reference to 34(f) which reads as under:-

“To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and Regulations made thereunder.”

He further also referred to Section 34(g) which read as under:-

"To ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act."

He argued that the only remedy available for non-compliance of the orders and directions is U/s. 63 of the Act. Thus, the present complaints are maintainable and a case is made out for imposition of penalty against the respondent, for deliberate non-compliance, even after one year of the orders/directions. Further, the respondent had not filed any appeal before the REAT, Punjab, which shows the intent of the Respondent, to not comply with the same.

He reiterated that the complainants are not seeking execution of the order dated 21.05.2021, a right which they reserve, to do so separately but are separately seeking imposition of penalty, strictly in terms of the provisions of the Act and the Rules and Regulations made thereunder. He also submitted his written submissions on 23.05.2022.

7. Sh. Harsh Bunger, Counsel for the respondent rebutted the arguments by taking objection to filing of the present complaints for violation of Section 63, instead of proceeding further for recovery of interest in terms of Rule 25 read with Section 40 of the Act. He argued that the remedy available to the complainants is restricted only to the execution applications. The remedy u/s. 63 is available only in regards to general orders/directions of the Authority, as distinct from orders and directions in complaints filed U/s. 31 of the Act. He objected to the complaint being filed U/s. 31 of the Act but did not specify any other procedure prescribed for complaints for offences under Chapter VIII of the Act. He reiterated the point raised in the reply that the complainants were liable to submit a calculation sheet, which was required to be examined by the respondent, in terms of the order of this Authority and then file an execution application for recovery, in case of non-compliance by the respondent. He objected to the additional remedy of filing complaints U/s. 31 for non-compliance of the orders, which are punishable u/s. 63 of the Act.

The counsel for the complainants rebutted the arguments of the respondent's counsel by once again arguing for making complete distinction between the execution proceedings for recovery of interest, which is payable to the complainants and imposition of penalty, as provided U/s. 63, which is not payable to the complainants but to a distinct fund, as created by the State Government. As such there is no overlapping of two distinct reliefs leading to undue enrichment of the complainants. He further clarified that all orders of the Authority in the complaints filed U/s. 31, for any of the reliefs provided under the Act, are issued U/s. 37 of the Act, as per the functions entrusted to this Authority U/s. 34(f) of the Act. Non-compliance of the same is punishable u/s. 63 of the Act and thus the present complaints are maintainable and are required to be adjudicated by this Authority.

E. FINDINGS:-

8. Based on oral averments & written submissions, following are the findings:-

I. The authority vide its order dated 21.05.2021 directed the respondent *to pay interest to the complainants @ 9.30% (today's highest SBI MCLR rate of 7.30% plus 2%), as prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, from 01.04.2018 (Complaint No. 1689 of 2020) and 01.07.2018 (Complaint No. 1554 of 2020) respectively till 11.10.2019."*

II. The respondent have not filed any appeal before REAT, Punjab, till the date of this order.

III. The respondent has not complied with the directions of this Authority, till the date of this order.

IV. The Authority draws its power from Section 37 of the Act, to issue directions for the purpose of discharging its functions, under the provisions of this Act or Rules or Regulations made thereunder, to the promoters or allottees or real estate agents, as the case may, as it may consider necessary. Such directions shall be binding on all concerned.

V. The authority draws its power, from Section 34(g), to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act.

VI. The only remedy available to the Authority to punish non-compliance of its Orders and Directions is provided U/s. 63 of the Act.

VII. The remedy of filing execution application as provided U/s. 40(1) of the Act read with Rule 25 of the Rules is distinct from the remedy of seeking punishment for non-compliance of the Orders/Directions of this Authority.

VIII. Section 40(2) clearly states as follows:-

“40. Recovery of interest or penalty or compensation and enforcement of order etc.

(1) XXXXXX XXXXXX

(2) *If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”*

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The Act thus makes a clear distinction between the procedure for recovery of interest/penalty/compensation and enforcement of its orders/directions. Thus, there is no illegality in the filing of the present complaints.

IX. The imposition of penalty U/s. 63 will neither amount to miscarriage of justice nor to undue enrichment of the complainants, as the amount shall not be payable to the complainants.

F. DIRECTIONS OF THE AUTHORITY:-

9. In view of the written submissions and oral averments, I am of the view that the complainants have been able to establish their case, in regards to non-compliance of the orders and directions of this Authority, issued on 21.5.2021. Accordingly, both the complaints are allowed. The same is punishable u/s. 63

of the Act. Although, Section 63 of the Act provides for a penalty, for every day of the default, which may cumulatively extend upto 5%, of the estimated cost of the real estate project, as determined by the Authority but taking a lenient view the following directions U/s. 37 read with Section 34 (f) are issued:-

- I. The respondent is liable for payment of a penalty of Rs. 5,00,000/- in each case. The same shall be payable within 90 days, to this Authority, by way of demand draft issued in its name i.e. 'Real Estate Regulatory Authority, Punjab' payable at Chandigarh. On failure to comply with these directions, a penalty amount of Rs.2,000/- per day, shall be payable, in addition to above amount, till such default continues.
- II. No other relief is made out.

10. Registry of this Authority is directed to forward a copy of this order to the Secretary and Manager (F&A) of this Authority for their information and necessary action.

11. File be consigned to record room after due compliance.

Announced: 31.05.222


(Sanjiv Gupta)
Member
RERA, Punjab.