

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

Complaint No.GC 0331 of 2021
Date of Institution :24.08.2021
Date of Decision: 03.03.2022

Harjit Kaur w/o Shri Baldev Singh Dhillon, House No.1997, First Floor,
Phase-10, SAS Nagar, Mohali, Punjab-160062

.... Complainant

Versus

Hero Realty Private Limited, Corporate Office-264, Ground Floor, Okhla
Industrial Estate, Phase-III, Central Delhi, Delhi-110020

.... Respondent

Present : Shri Mohd. Sartaj Khan, Advocate for the complainant
None for respondent

ORDER

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against delay in delivery of possession of the apartment booked by the complainant in the project "Hero Homes" developed by the respondent at Mohali.

2. The facts of the case as discerned from the pleadings are that the complainant booked an apartment on 06.03.2016 in the above project. After making the necessary payment, allotment letter was issued in relation to apartment no.306, measuring 1565 square feet, in Tower-3. The total sale price was mentioned as Rs.64,08,325/-. An agreement for sale termed as the Buyer Agreement was executed on the same date i.e 19.08.2016 and as per its provisions possession of the apartment was to be delivered within 42 months i.e. by 18.02.2020. It is alleged in the complaint though the

complainant had made a total payment of Rs.70,27,479/- yet possession of the unit was delayed by the respondent. Possession was offered on 13.01.2021 but when the complainant visited the premises it was found that basic facilities and amenities had not been provided. Hence possession was not taken in response to the offer. The relief sought in the complaint accordingly is delivery of possession to the complainant after completion of the project in all respects and provision of all promised amenities.

3. Notice of the complaint was served on the respondent. The following points have been urged in the reply:

- i. That the complainant had delayed the payments of various installments and was therefore acting in violation of Section 19(6) of the Act. Clause 7.3 of the format of the agreement given in the Punjab State Real Estate (Regulation and Development) Rules, 2017 has also been cited to contend that because of the default of the complainant the date of possession of the apartment should be deemed to have been extended by this period.
- ii. That there was a violation of Section 19(10) of the Act by the complainant since she had not taken possession within the stipulated period of 2 months from the date of issue of Occupancy Certificate.
- iii. That the project was affected due to the lockdown imposed after the onset of the Covid-19 pandemic and hence the delay was not on account of any default of the respondent.

4. The matter was taken up for arguments on 07.02.2022. While Counsel for the complainant argued his case, Counsel for the respondent was not

available on that date and was accordingly asked to submit his written arguments. These have been received and taken into account. On behalf of the complainant, Shri Mohd. Sartaj Khan, highlighted the fact that possession had not been offered by the date stipulated in the agreement for sale and hence the complainant was entitled to invoke Section 18 of the Act. The complainant wished to stay on the project and was seeking payment of interest at the prescribed rate for every month of delay. In the written arguments submitted on behalf of the respondent the contents of the reply have been reiterated.

5. No other issue has been pressed.

6. I have carefully considered the rival contentions and also gone through the record of the case. It is established from the record that as per the agreement the promised date of possession was 18.02.2020. The occupation Certificate for the project was granted on 12.01.2021 and a valid offer of possession of the apartment was made on 14.01.2021, after a delay of more than 10 months. Further, the contention of the respondent in regards to applicability of Clause 7.3 of the 'Agreement to Sale' prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 which states that *"the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount"*, has to be read in harmony with Clause 9.2(i) of the same document, which entitles the allottee to *"stop making further payments to the promoter"* in case of default by promoter under the conditions listed in the agreement to sale. Accordingly, the respondent cannot take a one-sided view of the provisions of the 'Agreement for Sale'. In any case, the agreement in this case was signed before the commencement of the Act and Rules; and does not have these clauses mentioned therein. Hence, they cannot be relied upon. Next

the respondent's contention that the complainant should have taken possession within 2 months of the date of Occupancy Certificate is valid and hence interest for the period of delay can be allowed only till a date 2 months after the date of offer of possession. It is reiterated that once a project has received an Occupancy Certificate an allottee cannot be allowed to delay taking possession on the ground that the unit was not complete. Further, this Authority has held that the extension of 6 months on account of Covid-19 pandemic will be applicable only in relation to obligations that arose after 15.03.2020. In this case the promised date of possession was 18.02.2020 and hence the benefit of the relaxation allowed under the Circular No.RERA/ENG/2020/20 dated 13.05.2020 is not admissible in this case.

7. As a result of the above discussion the complaint is accepted and the following is ordered:

- i. The respondent shall be liable to pay interest @ 9.30 per annum (today's highest MCLR rate of 7.30% plus 2%) under Section 18(1) of the Act of 2016 for the delay in handing over possession from 18.02.2020 till 14.03.2021. This amount shall be paid within 60 days.
- ii. The complainant shall take possession of the apartment offered within 2 months of this order, after making all due payments as provided in the Buyer Agreement.

Announced
03.03.2022


(Navreet Singh Kang)
Chairperson