

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

Complaint No.AdC 1518 of 2020 BF TR AUTH 0026  
Date of Institution :11.02.2020  
Date of Decision: 03.03.2022

Om Scaffolders, Plot no. 274 A, Industrial Area Phase II, Panchkula –  
134109

.... Complainant

Versus

Chandigarh Overseas Private Limited, SCO No. 196-197, Sector 34 A,  
Chandigarh - 160022

.... Respondent

Present : None for the complainant

Ms. Rabia Devgun, advocate for Shri Vipul Monga, Counsel  
for the respondent

**ORDER**

The relief claimed in this complaint under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016) is the refund of money deposited by the complainant for the allotment of a residential apartment in the project 'Fashion Technology Park' developed by the respondent at Mohali, because of the inordinate delay in delivery of possession thereof.

2. It is noted that this file has been referred by the Adjudicating Officer vide order dated 03.01.2022 in view of the judgment of the Supreme Court in "M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. and Ors." (Civil Appeal No.6745-6749 of 2021, with a direction to the parties to appear before this Bench of the Authority for deciding the claim of refund and interest.

3. The averments in the complaint are that the complainant had booked an apartment measuring 2075 square feet in the above project, and due payment had been made by the complainant in this behalf in the year 2012-13. 8 receipts issued by the respondent for a total of Rs 55.00 lakhs have been enclosed with the complaint as Annexure C-2. A Developer Buyer Agreement was signed on 06.04.2012, and under its provisions the possession of the unit was to be delivered by 30.06.2013. However, till date possession had not even been offered despite the lapse of almost 10 years from the payment. The present complaint, seeking relief of refund of the deposited amount along with interest thereon, has accordingly been filed.

4. Notice of the complaint was served on the respondent who has filed a reply in the matter. It is mainly alleged that the project was delayed because of a dispute between the respondent and its contractors engaged for the construction of the project. One of its contractors, M/s Ionic Realty Ltd., had filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Additional District Judge, Chandigarh and a status quo had been ordered in this matter between 26.04.2011 and 23.08.2014. It is also contended that the respondent had filed a CWP No.5536 of 2013 in the High Court of Punjab and Haryana against the demand raised by the Greater Mohali Area Development Authority for payment of license fee etc. This demand was ultimately quashed by the High Court. Thereafter another CWP No.4856 of 2014 was filed by Ms. Rupinder Kaur in which the respondent was also made a party along with the State of Punjab, and status quo had been granted on 14.03.2014. It is also alleged that the

complaint was badly time-barred since it had been filed almost more than 7 years after right to sue accrued to the complainants on 01.07.2013. A decision of the Authority in GC No.1285 of 2019 has been cited in support of this contention. It is finally pointed out that the complainant had failed to deposit the full amount of sale price and only a sum of Rs. 2.50 lakhs had been received by the respondent. This was part of the reason why the project could not see the light of the day, and the deposited amount had been confiscated under clause 13 of the agreement. Accordingly the complainant was not entitled to any relief, it is contended.

5. In the rejoinder filed on behalf of the complainant, it has been reiterated that a total payment of Rs.55.00 lakhs as the cost of the apartment has been made and that the respondent's stand that only Rs.2.50 lakhs had been paid is incorrect. It has also been denied that the allotment had been cancelled on account of non-payment of instalments. The next submission in the rejoinder is that the delay had been on account of the respondent's own default; and accordingly the orders of the court did not amount to *force majeure*. The record of payments kept by the respondent in relation to allotment of flats in the project, and showing Rs 55.00 lakhs having been received from the complainant has been submitted as Annexure C-4. Also, copies of extracts of the complainant's Balance Sheet for the year 2016-17 have been adduced through an application dated 19.07.2021. Similarly, the respondent has placed on record an extract of its bank statement showing a payment of Rs 10.00 lakhs having been made to the complainant on 05.06.2013. Written arguments were also submitted

by both Counsel when the matter was pending before the Adjudicating Officer.

6. Arguments were heard on 31.01.2022. Appearing on behalf of the complainant, Shri Pankaj Katia, Advocate reiterated the contents of the complaint. He submitted that the delay in delivery of possession was fully established on file and the delay had been to the extent of almost 10 years since the agreed date of possession was 30.06.2013.. Violation of Section 18 of the Act of 2016 was fully established on file and hence the complainant was entitled to refund of Rs. 55.00 lakhs along with interest thereon, was his contention. In response, Shri Vipul Monga, Counsel for the respondent, also relied upon his pleadings. Apart from contending that the delay was caused because of the disputes with the contractors and the orders of status-quo granted by courts at different stages, he stressed that only a payment of Rs 2.50 lakhs had been received as consideration for the apartment.

7. I have carefully considered the rival contentions and gone through the record of the case. Having done so, it is crystal clear that there is unreasonable delay in delivery of possession of the unit to the complainants. The respondent's defence on the ground of orders of status quo by various courts and on grounds of *force majeure* has been dealt with in my order dated 28.02.2022 in complaint no AdC No. 0196 of 2021, and found to be devoid of merit That conclusion is applicable in this matter too. Also, the plea of the complaint being barred by limitation is also not valid since the Authority has subsequently held in the case of "**Kanishk Kapoor Vs. ATS Estates Pvt. Ltd.**" (GC No.1828 of 2020) that the Limitation Act does not apply to proceedings before the Authority. Thus these contentions

raised on behalf of the respondent are found to have any validity, and delay in delivery of possession of the apartment is fully established on file. The complainant is therefore entitled to refund of the amount deposited by him along with interest.

8. As noted above, there are conflicting versions about the actual amount paid and received in relation to the apartment. In support of his contention that a sum of Rs.55.00 lakhs had been paid, the complainant has relied upon the receipts issued by the respondent. His counsel drew my attention to the judgement of dated 22.06.2020 of the Adjudicating Officer in Complaint No. 1256 of 2019, and specifically the following extract

*"Though, on behalf of the respondent, it has been specifically pleaded that the complainant did not make the payments of balance amount and, therefore, the earnest money stood forfeited and it being case of automatic cancellation of the allotment, however, on behalf of the respondent in the pleadings, there is no specific denial to the averment of the complaint that the amount of Rs.27,00,000/- was received and receipts were issued by the respondent as to how the said documents came into existence, if further payments had not been made on behalf of the complainant. In such a situation, it can be safely concluded tht the complainant made the total payment of Rs.27,00,000/- to the respondent in respect of the allotment of unit no. 318."*

He submitted that this order would be applicable in this matter too since the respondent had not explained the source of the receipts. He also relied upon the record of payment maintained by the respondent and placed on record on 04.03.2021 as Annexure C-4. As noted in

para 4 above this shows a payment of Rs.55.00 lakhs. Opposing this, Sh. Vipul Monga pointed out that out of eight receipts relied upon by the complainant, only one (No. 3202 dated 18.05.2012) related to payment for the apartment. The remaining receipts were on account of other transactions between the complainant and two entities, M/s Star Constructions and M/s Future Colonizers. He also pointed out that Annexure C-4 showing a payment of these Rs.55.00 lakhs could not be relied upon since it was on plain paper and did not carry the signatures of the respondent or its authorized personnel. Having considered these rival contentions I would hold that seven of the eight receipts submitted by the complainant do not relate to payment for allotment of the apartment. This is because six of the bills have the words "Bills of Future Colonizers" written on them whereas one has "Bills of Star Constructions" inscribed thereupon. In view of this it is difficult to hold that these receipts are for payment of the price of the apartment, especially since one remaining bill states it to be so. Annexure C-4 submitted by the complainant also does not inspire confidence since it is not signed by any authorized signatory on behalf of the respondent. Thus it is held that only a payment of Rs. 2.50 lakhs has been made qua the allotment of the apartment, and refund is limited to this amount along with interest.

9. As a result of the above discussion, the complaint is accepted and the respondent is directed to refund Rs.2.50 lakhs to the complainant along with interest at the rate of 9.30% p.a. (today's SBI MCLR Rate plus 2%) to be paid from the date of deposit till the date of actual refund. The payment should be made within the time stipulated

under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

Announced  
Dated: 03.03.2022

  
(Navreet Singh Kang)  
Chairperson