

**BEFORE SH. AJAY PAL SINGH, MEMBER,  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB,  
AT CHANDIGARH.**

Complaint No.GC1842 of 2020 BF  
Dated of Decision: 21.03.2023

Praveen Pathania through his General Power of Attorney Holder Mona Thakur Pathania.

.....Complainant

Versus

M/s Future City Developers Pvt Ltd, Kharar-Landran Road, Near Sante Majra, Sector 15, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140307.

.....Respondent

Complaint under Section 31 of the Real Estate  
(Regulation and Development) Act 2016.

Present: Sh. Raja Paramdeep Saini, Advocate, for the complainant  
Sh. Rishi Kaushal, Advocate, for respondent

**ORDER**

1. Originally this complaint was filed under Section 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter called as the Act), read with Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules), in Form-M before this Authority. Thereafter, in view of circular issued by the Authority bearing No.RERA/PB/Legal/24 dated 05.03.2021, this complaint was transferred to the Bench of learned Adjudicating Officer on 12.05.2021. Then the Adjudicating Officer has transferred part of this complaint, pertaining to refund and interest on refund under Section 18(1) of the Act, to this Bench keeping in view the decision of the Supreme Court, dated 11.11.2021, in case of **M/s. Newtech Promoters and Developers Pvt Ltd Vs. State of UP & Ors** –Civil Appeal No.(s) 6745- 6749 of 2021, vide his order dated 09.02.2022. The Adjudicating Officer has retained with himself the prayers for compensation.

2. The brief gist of the complaint is that, the complainant had booked one apartment in the respondent's project by the name of "Casa Homes", on 09.12.2019, for a sale consideration of Rs.42,50,000/-. As per the agreement to sell of even date, the possession of the flat was due on 30.04.2020. It has been mentioned in the complaint that, the complainant had shown interest in the booking of the flat on the basis of Model apartment shown to him. However, upon inspection of the said apartment allotted to him, whose possession was offered by the respondent in July, 2020, the complainant found that the respondent had used sub-standard construction material and the layout of the flat was not similar to the Model flat shown to him. It was also submitted that, till date, the complainant has paid a sum of Rs.26,25,000/-. It was further submitted by the complainant that, the shortcomings in the quality of the flat were taken up with the respondent subsequent to the offer of possession, with no results. As the respondent failed to rectify the defects, the complainant is now seeking refund as per the provisions of Section 12, read with Section 18 of the Act.

3. In response to notice, the respondent made a detailed reply, vide letter dated 05.02.2021. Following are the averments made in the reply:-

- i. It was conceded by the respondent that the complainant had paid a sum of Rs.26,25,250/-, as against the total sale consideration of Rs.42,50,000/-, for unit No.HH5, in block H, of 'Casa Homes'. It has also been admitted by the respondent that, as per the agreement to sell, the possession was to be given by 30.04.2020. It was further



submitted by the respondent that an offer of possession was given in July 2020, but the complainant has failed to take possession till date.

- ii. In its reply, respondent has stated that there was no commitment on its part to give a flat as per the model flat. Rather, specifications of the flat were given in the agreement to sell.
  - iii. That a reminder was sent to the complainant, by letter dated 03.12.2020, to take possession of the flat and to pay the outstanding amount of Rs.16,27,250/-. However, it appears that the complainant is not interested in taking possession of the flat and in making payment of the demand raised.
  - iv. That the complainant has failed to point out any violations or contraventions of the provisions of the Act or the Rules.
  - v. That the whole complaint is with a mala-fide intention of blackmailing the respondent.
  - vi. That several allottees have already taken possession in the said block.
4. In rebuttal and in the written arguments filed by the complainant, the averments made in the complaint have been reiterated. The complainant has emphasized upon Section 12 of the Act, to press home the point that, the terms and conditions of the advertisement, as well as model flat/apartment shown to the complainant at the time of sale, as well as the sanctioned plan, were material and any violation of the said apartment/advertisement would entitle the allottee for

refund of their money. The complainant has relied upon the judgment of the Bombay High Court in case of **Bombay Dyeing and Manufacturing Company Limited and another Vs. Ashok Narang and another**, Appeal No.4996 of 2020, in this regard.

5. During the course of arguments on 10.01.2023, the counsel for complainant, Shri Raja Paramdeep Saini, submitted that till 28.07.2020, when the offer of possession was made to the complainant, the promoters were not having any occupancy certificate or partial completion certificate with them and, therefore, the offer of possession was defective. The counsel for respondent accepted this fact.
6. I have perused the written and oral submission made by both the sides. The undisputed facts of the matter are that the complainant had been allotted flat No.HH-5, in block H, in 'CASA Homes', vide allotment letter dated 19.12.2019, for a consideration of Rs.42,50,000/-. As per the agreement to sell, the possession of the flat was to be handed over to the complainant on 31.12.2019, which was extendable till 30.04.2020. Out of the total sale consideration of Rs.42,50,000/-, the complainant has paid Rs.26,25,250/-; balance sum of Rs.16,27,250/- was payable on possession. Offer of possession was made to the complainant on 28.07.2020, with a demand notice for the balance amount of Rs.16,27,250/-. It is also not in dispute that at the time of offer of possession, the respondent was not having any partial completion certificate/occupancy certificate with it. Subsequent to the offer of possession, the complainant had written an email to the promoter (Annexure R4 of Reply), pointing out the discrepancies noted in the quality of the fixtures vis-à-vis the sample flat. The respondent has not placed on record any



objections to the said allegation; apart from saying that he was not bound to deliver as per the sample flat shown: but rather on the basis of the specifications given in the agreement to sell.

7. The main prayer of the complainant is for refund and interest on refund for the violation of the provisions of Sections 12 and 18 of the Act, which read as under:-

*"12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*

**18. (1)** *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

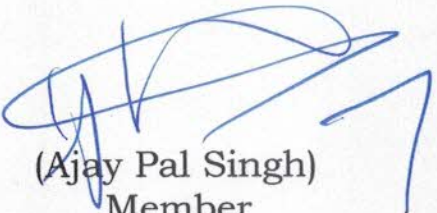
*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."*

8. The dispute essentially is that according to the complainant the project was not complete within time agreed and there were changes effected in the layout and the amenities, which is a breach of Sections 12 and 18 of the Act. The complainant has, therefore, sought cancellation of the allotment and refund with interest.

On the other hand, the respondent has submitted that the offer of possession has been made within time of the moratorium granted by COVID 2019 is allowed and the possession has already been made as per specifications as given in the agreement to sell. I find that even if it is accepted that the offer of possession, made in July 2020, was within the extended time of six months, allowable as per circular dated 28.10.2020 of this Authority, on account of COVID 19, it was nevertheless made without any occupancy certificate or partial completion certificate. Therefore, to that extent the offer of possession is violative of the provisions of Section 11(4)(b), read with Section 17 of the Act and cannot therefore, be considered a valid offer of possession. This would make the complainant eligible for refund of the sale consideration under Section 18(1) of the Act, as the promoter has failed to give possession within the time given in the agreement to sell. This would also be in compliance of Clause 7.6 of the agreement to sell, which clearly stipulates that the allottee shall be eligible to withdraw from the project, if the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of this agreement duly completed by the date specified, therein. Hence, the respondent is directed to refund the amount of Rs.26,25,250/- to the complainant, along with interest as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2%, in view of the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017, with effect from the respective date of payment till refund and this amount shall be paid within ninety days from the date of this order.

9. The complaint is accordingly disposed of as allowed in above terms. File be consigned to record room and copy of the order be provided to the parties free of costs.

Dated:21.03.2023



(Ajay Pal Singh)  
Member