

**BEFORE SHRI SATYA GOPAL, CHAIRPERSON,
REAL ESTATE REGULATORY AUTHORITY,
PUNJAB**

Complaint No.GC0255 of 2022
Date of Institution :17.05.2022
Date of Decision: 29.11.2023

1. Aarti Bala wife of Shri Ankush Thakur
 2. Ankush Thakur s/o Shri Kant Kumar
Both residents c/o Kant Kumar, VPO Mehtabpur, Bhangala,
Mukerian, Hoshiarpur, Punjab – 144306.
- Complainants

Versus

M/s Hero Realty Private Limited, # 264, Ground Floor, Okhla
Industrial Estate, Phase-III, South Delhi, Delhi 110020

.... Respondent

Present : None for the complainants
None for the respondent

This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016) was instituted on 17.05.2022 for issuance of directions to the respondent to hand over the possession of the apartment Number T-02/2204, complete in all respects along with completion certificate immediately with all amenities and facilities as per the agreement to sell dated 23.07.2020 along with registration of conveyance deed and also for issuance of 'No Due Certificate'; and to pay interest for every month of delay from 30.09.2021 (agreed date of possession) till the actual date of handover of possession along with completion certificate in



accordance with relevant provisions of the Act of 2016 and rules made thereunder.

2. In brief, the case of the complainants is that upon the representations made by the respondent regarding timely delivery, they booked a 3 BHK+ST+SR apartment in the project of the respondent company i.e. "Hero Homes Mohali - Phase 1", Sector 88, SAS Nagar, Mohali, vide application dated 26.06.2020. It is further mentioned that on 04.07.2020 the respondent allotted apartment number 2204 having carpet area 1282 square feet (equivalent to super area of 1950 Sq. Ft), on twenty second floor in Tower No.02(T-02/2204) along with closed parking No.90 and 91 admeasuring 134.5 sq. ft each, vide allotment letter dated 04.07.2020 (Annexure-C/1). It is further stated that this project is registered with this Authority vide registration no. is PBRERA-SAS81- PR0114. Thereafter, on 23.07.2020 an agreement to sell (Annexure-C/2) was entered into between both the parties for a total consideration of Rs.99,01,974/-. A payment plan was also given to the complainants which is a part of the said agreement. It is further contended that the complainants made timely payments to the respondent as per receipts(Annexure-C/3) and till 30.03.2021, a total sum of Rs.63,16,967/- (Ledger is Annexure-C/4) was paid by the complainants and the balance amount is to be paid at the time of the possession. It is further stated that as per clause 7.1 of the agreement to sell, possession was to be



handed over to the complainants by 30.09.2021. However, the respondents have failed to deliver the timely possession and there is a delay which is still continuing and as per clause 5 of the agreement to sell, time is of essence. The complainants also sent many emails (Annexure-C/5) to enquire about the status of the possession but without any result. It is further contended in the complaint that the sole intention of the respondent is to dupe the investors by utilizing their money and investing the same at other places which amounts to unfair trade practice. It is strongly contended that the respondent company is bound to hand over the possession of the apartment as per terms and conditions of the agreement to sell and cannot sit over the same for an indefinite period. Due to the respondent's inactions and unprofessional attitude, the complainants have suffered tremendous mental and financial harassment. It is also mentioned that such inordinate delay on the part of the respondent in handing over possession of apartment is a clear cut violation of the rights of the allottees under the provisions of Act of 2016 as well the agreement executed between the parties. It is clear that the respondent has violated Section 18 of the Act of 2016, therefore, the complainants are constrained to file the complaint under Section 31 of the Act of 2016.

3. Upon notice Shri Vishal Singal, learned Counsel for the respondent has appeared and sought time to file his reply. As per



interim order dated 01.08.2022, reply was filed by the respondent and the matter was adjourned to 25.08.2022. Since the then Chairperson retired on 09.08.2022, the matter was thereafter put up before the undersigned on 02.02.2023. Rejoinder was also filed by the learned Counsel for the complainants.

4. In the reply, learned Counsel for the respondent has taken preliminary objections that the complaint is not maintainable; agreement was executed on 23.07.2020 and due to Covid-19 the activities had come to standstill and even RERA authority has granted extension for completion of the projects registered with the Authority, so the *force majeure* is applicable in the present case and the clause 7.1 mentioned in the buyer agreement dated 23.07.2020 regarding delivery of possession on 30.09.2021 is not applicable; the learned Counsel for the respondent has referred to various Sections i.e. Sections 2(c), 2(z), Section 18, Section 19, Section 31, and Section 71 of the Act of 2016 and Rules 2(h), Rule 5, Rule 8, Rule 16, Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 in his reply; the agreement for sale is as prescribed in Annexure 'A' of Rules 2017; thereafter learned Counsel for the respondent has also referred to Section 4(1), Section 2(z)(i), Section 4(2) (g), Section 13(1); this authority vide its letter dated 17.05.2021 has extended the registration until 30.03.2022 as per Section 6 of the Act of 2016 and upto 30.09.2022 as per Circular No.RERA/ENF-2020/23 dated



28.10.2020 due to *force majeure* situation of Covid as such the present complaint seeking interest as well as possession is not maintainable; that even otherwise the complainants cannot invoke the jurisdiction of this Authority in view of clause 34 of the apartment buyer's agreement wherein it is clearly mentioned that in the event of a dispute between the parties the same will be referred to the Arbitrator; that the project is going on full swing and the respondent shall offer possession upon receipt of completion certificate and occupancy certificate; that the complainants have agreed and accepted that in case of *force majeure* the date of possession can be reasonably extended, which has been extended till 30.09.2022 by this Authority; that the relief of the complainants to claim interest for the delay in offer of possession and as per declaration submitted by the respondent under Section 4(2)(I)(C) of the Act of 2016, the project is to be completed by 31.03.2022, but the same has now been extended till 30.09.2022 by the Authority itself; that there is no evidence by the complainants that there has been any disproportionate gain to the respondent. Out of the total price of Rs.99,01,774/-, the complainants have paid only Rs.63,16,967/- and still a sum of Rs.38,37,380 is payable by the complainants on offer of possession and due to delay a sum of Rs.33,469/- is payable by the complainants; that the project "Hero Homes" situated at Mohali, Phase-1 is going on at fast pace and towers have already been



completed and partial completion/occupation certificate for these towers have already been granted by the competent authority and people are residing there; that the respondent has completed the tower T-02 and internal finishing is going on and possession would be offered after getting the partial completion/ occupation certificate. The learned Counsel for the respondent has annexed with the reply application form, buyer agreement dated 23.07.2020, statement of account, copy of declaration filed with RERA Authority by respondent, copy of letter dated 17.05.2021 and copy of partial completion/occupation certificate of other towers.

5. A rejoinder was filed by the complainants stating that the respondent has raised objections on frivolous grounds. The complainants are facing undue harassment at the hands of the respondent who has failed to honour the obligations mentioned in the agreement to sell dated 23.07.2020 by not delivering the possession of the apartment and parking. It is further contended that the respondent has admitted the delay but stated that it is due to Covid-19 pandemic. It is further contended that the respondent entered into agreement to sell on 23.07.2020 when the pandemic was at its full swing and agreed to hand over possession by 30.09.2021 as per clause 7.1 of the agreement. Thus, the respondent cannot escape its responsibility on frivolous grounds when the respondent was fully aware about the Covid-19



pandemic. Regarding the letter dated 17.05.2021 relied upon by the respondent whereby the registration was extended upto 30.03.2022 as per Section 6 of the Act of 2016 and further upto 30.09.2022, it is contended by the complainants that this letter pertained only to extension in registration of the project namely "Hero Homes Mohali Phase-I" and it has no bearing on the delivery of timely possession. The learned Counsel for the complainants further stated that it is wrong to construe that said letter provided extension in time period of delivery of possession. The respondent is creating false and concocted version and relying on the documents which have no bearing upon the adjudication of the present complaint. It is further contended that the respondent has not placed on file any evidence regarding delay in making the payments. Regarding the clause of arbitration, the complainants have stated that they have availed the remedy rightfully under the Act of 2016.

6. On 13.07.2023 learned counsel for the complainants has submitted his arguments along with calculation sheet. Learned Counsel for the respondent has also submitted his written arguments but without any calculation sheet

7. While repeating the contents of the complaint in his written submissions, it is further stated by the complainants that an agreement to sell was executed on 23.07.2020 between the parties



and the total consideration was Rs.99,01,974/-as per the agreement and also a payment plan, which is a part of the said agreement, was also given. It is further argued that till 30.03.2021, a sum of Rs.63,16,967/- as per receipts and ledger annexed as Annexure-3 and Annexure-4 respectively was paid and the remaining was to be paid at the time of delivery of possession. It is also stated in the written arguments that as per Clause 7.1 of the agreement to sell, possession of the apartment was to be handed over by 30.09.2021 but the respondent failed to do so which is still continuing. The complainants sent many emails but the respondent shows its incapacity to deliver the timely possession citing various reasons. It is further argued that the respondent has been unable to finish the construction in the stipulated time and in compliance of builder buyer's agreement the complainants have paid all the demanded amounts. However, the sole intention of the respondent is to dupe the investors by utilizing their money which amounts to unfair trade practice. Due to this attitude of the respondent, the complainants have suffered mental and financial harassment and agony.

8. In rebuttal to the submissions raised by the respondent i.e. that the delay is due to Covid-19, the complainants' response is that the respondent entered into agreement to sell on 23.07.2020 and at this date the Covid-19 pandemic was at its full swing and they agreed to hand over the possession to the complainants on



30.09.2021 as per clause 7.1 of the agreement to sell and now the respondent cannot escape from its responsibility on this ground of Covid-19; further the respondent has also relied upon letter dated 17.05.2021 whereby this Authority has extended the registration until 30.03.2022 as per Section 6 of the Act of 2016 which was further extended till 30.09.2022 and the respondent is claiming that the present complaint is premature. In response to this letter dated 17.05.2021, the complainants have argued that the respondent is misinterpreting this letter as this letter only pertains to extension in registration of the project namely "Hero Homes Mohali Phase-I" and it has no bearing on the timely delivery of possession. The respondent has wrongly concluded that this letter is also providing extension in time period of delivering possession and the respondent is deliberately trying to create false and concocted version and relying upon documents which have no bearing upon the adjudication of the present complaint. The Learned Counsel for the complainants has also attached a calculation sheet for the period from 30.09.2021 to 13.07.2023 claiming interest of Rs.11,93,811.58 on the amount deposited by the complainants and also the litigation expenses 1,00,000/-.

9. On the other hand, learned Counsel for the respondent has also placed on file his written arguments reiterating the contents of his reply as such there is no need to reproduce the same here for the sake of brevity. However, the learned Counsel for the



respondent has cited the order dated 22.08.2022 passed in Appeal No.100 of 2021 titled "Hero Realty Vs. Arun Premdhar Dubey" by the Hon'ble Real Estate Appellate Tribunal, Punjab wherein it was held that the period of 4 months can be excluded from the period of delay in offer of possession for the purpose of calculation of interest.

10. I have considered the arguments and also gone through the record.

11. From the pleadings of the parties it is noted that the execution of the agreement for sale, its terms and conditions and the payment of Rs.63,16,967/- has not been denied by both the parties. It is established on record that the possession of the apartment was to be delivered on 30.09.2021 as per clause 7.1 of the agreement to sell dated 23.07.2020, executed during the period of Covid-19 pandemic. However, till date no possession has been delivered to the complainants. The argument raised by the respondent is that due to *force majeure* all the activities had come to standstill as the entire country was under lock down. It is noted here that the respondent has executed the agreement to sell dated 23.07.2020 during the full swing of the Covid-19 pandemic. Before and after the date of execution of agreement to sell, the respondent has accepted Rs.63,16,967/- as per receipts (Annexure-C-3-colly) and customer ledger (Annexure C-4)



enclosed with the complaint by the complainants. Thus, this argument has no legs to stand as on one hand they are accepting the money from the complainants and on the other hand the respondent wants to take advantage of the Covid-19 pandemic. Further, as regards the argument of the respondent regarding issuance of letter dated 17.05.2021 (Annexure R-5) attached by the respondent himself with his reply, it is noted that perusal of same clearly indicates "Certificate for extension of Registration of project namely "Hero Homes, Mohali Phase-I" of M/s Hero Realty Pvt. Ltd. bearing Registration No.PBRERA-SAS81-PR0114" that this letter is only extension of registration upto 30.09.2022 as per Circular No/RERA/ENF/2020/23 dated 28.10.2020 due to *force majeure* situation of Covid-19 pandemic. However, there is no whisper about delivery of possession in this letter dated 17.05.2021 which was issued after considering the *force majeure* situation. Regarding the orders dated 22.08.2022 passed by the Hon'ble Tribunal, Punjab it is clear from the perusal of the agreement to sell dated 23.07.2020 that the respondent himself executed the agreement for sale and committed to hand over the possession of the unit on 30.09.2021. It is also a fact that the respondent has also received substantial amount from the complainants during this period of Covid-19 pandemic. With due respect to the orders, no doubt, the Hon'ble Appellate Tribunal, Punjab has granted 4 months to be reduced from period of



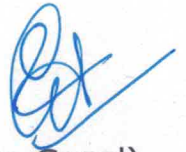
calculating the interest. However, the facts of that case are not applicable to this complaint. In the said case, the agreed date of delivering possession was prior to onset of Covid-19 pandemic and the possession was admittedly delivered in January, 2021 after delay. It was under such circumstances that the Hon'ble Appellate Tribunal took the view that a period of 4 months from March, 2020 should be afforded to the developer to absolve him of the liability of completing the project within the timeline prescribed. As is stated above, the agreement of sale was executed on 23.07.2020 i.e. during the Covid-19 pandemic and the respondent was well aware about this fact. A person who seeks equity must do equity. As such, the complainants are entitled to claim interest from the agreed date of possession till the date of delivery of valid possession after obtaining completion certificate.

12. From the above overall facts and circumstances, it is established on record that the possession of the apartment was to be delivered on 30.09.2021 as per clause 7.1 of the agreement to sell dated 23.07.2020. However, till date no possession has been delivered to the complainants.

13. As a sequel of the above, this complaint is accepted and the respondent is directed to pay interest as prescribed under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 at the rate of 10.75% (today's rate 8.75% per annum



plus 2% as per State Bank of India's Highest Marginal Cost of Lending Rate) with effect from 30.09.2021 till a valid offer of possession is made to the complainants after obtaining the completion certificate from the Competent Authority. The respondent is further directed that the payment of interest be made from 30.09.2021 till the date of this order within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 i.e. within 90 days from the date of this order. If the valid possession has not been delivered as on the date of passing of this order, the interest accruing hereafter shall be credited/ paid to the complainants at the time of handing over of possession to them after obtaining the completion certificate.



(Satya Gopal)
Chairperson
Real Estate Regulatory
Authority
Punjab

29.11.2023

Aarti Bala and Anr Vs. M/s Hero Realty Private Limited

Present : None for the complainants
None for the respondent

Vide separate order, the complaint is allowed.



(Satya Gopal)
Chairperson
Real Estate Regulatory
Authority
Punjab