

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

Complaint ADC No.0030/2022

TR-AUTH0218 of 2022

Date of Order: 02.03.2023

Anjali Verma, Flat No.702 D3, Maya Garden City Zirakpur,  
District Sahibzada Ajit Singh Nagar, Mohali, Punjab, Pin Code  
140603.

....Complainant

Versus

Barnala Builders, Maya Garden, village Singhpura, Chandigarh-  
Delhi Highway, Zirakpur, District Mohali, Punjab, Pin Code  
140603.

Date of Order:....Respondents

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

Present: Sh. Ashok Kumar Malhotra, Advocate, for the  
complainant.

Sh. Jatin Bansal, Advocate, for the respondent.

**ORDER**

1. The brief gist of the complaint is that the complainant had booked one commercial shop in the project of the respondent by the name of Maya Garden Magnesia, in Zirakpur, Mohali. It has been alleged that, on the basis of allotment letter dated 14.08.2018, the respondent had issued a letter for offer of possession dated 21.06.2021 and asked the complainant to clear the pending dues of Rs.2,69,866/-. It has further been mentioned in the complaint that, upon receipt of the letter of possession, the complainant visited the site office of the respondent and asked the employees of the respondent to provide the completion certificate for the

entire project and also the no objection certificate received from various authorities. It has also been alleged that the builder failed to give 12% return on her investment as promised. It has further been alleged that the respondent failed to provide the possession of the unit in question within the framed time, in accordance with the procedure mentioned in the agreement to sell. Hence, the complainant has sought the following reliefs:-

- (a) To provide all permissions and certificates for the project as a whole; and not just a partial completion certificate, before offering possession;
  - (b) For compensation for delay in offering of possession;
  - (c) For awarding litigation expenses.
2. In response to notice, the respondent has filed its reply vide letter dated 07.11.2022. The main averments in the reply are as follows:-

- i. That the complainant has deliberately withheld the fact that the PCC/OC was acquired by the respondent on 07.06.2021. After acquiring the said certificate, possession was offered to the complainant vide letter dated 21.06.2021;
- ii. That the complainant has also failed to mention that a return of Rs.2,44,5000/- has already been paid to her by way of assured return and a sum of Rs.72,040/- has been given by way of credit notes;
- iii. That as per Section 14(4)(b) and Section 17 of the Real Estate (Regulation and Development)



Act, 2016 (for short the Act), possession of a unit is to be given within three months from the date of obtaining of an occupancy certificate. This position of law has also been mentioned in clause 7.2 of the buyer's agreement. The reliance has been placed in this regard upon the following judicial citations:-

1. Rakesh Tastogi Vs. M/s Citi Centre Developers, GC No.1509 of 2019.
2. Maj. Deepak Chauhan and anr. Vs. ATS Estates Pvt Ltd, GC No.1425 of 2019.
3. Pardeep Upadhayaya Vs. M/s Omaxe Chandigarh Extension Developers Pvt Ltd File No.102/M(SG) 1351 of 2019.
4. Ireo Grace Real Tech Pvt Ltd Vs. Abhishek Khanna and others, Civil Appeal No.5785 of 2019.
5. Circular Memo No.RERA/ENF-19 dated 09.07.2019.

iv. That the complainant is an investor and not a consumer. The preamble of the Act clearly lays down that the Act is to protect the interest of the consumer. Therefore, an investor would not be entitled to any compensation as per the provisions of the Act.

v. That the incomplete specifications mentioned in the complaint come under the purview of common area facility, for completing of which, the respondent has time till March 2023 as per permission granted by this Authority.

vi. That the photographs annexed by the complainant at Annexure C5 do not specify the name, block or the unit and as such, cannot be treated as evidence. On the other hand, the

photographs annexed by the respondent, along with its reply, clearly show that the project is complete in all respects.

vii. That more than 700 allottees in the project have already taken possession of their respective units and have not raised any issues, such as those raised by the complainant.

3. During the course of arguments, the counsel for complainant Shri A.K. Malhotra, reiterated the points made in the complaint. He specifically mentioned that no possession has been taken of the allotted shop till date and in his view, partial completion certificate is not sufficient for taking possession. However, he admitted that the due date for taking possession, as per the agreement for sale dated 10.06.2019, was September, 2022 and that possession was offered in June 2021 before the due date. It was submitted by him that the block for which Partial completion certificate has been issued is far from complete and a local commission may be appointed to verify the facts.

4. The counsel for respondent, Shri Jatin Bansal, strongly opposed the appointment of a commission on the ground that such a request cannot be made at the arguments stage as it would amount to introduction of additional evidence. Shri Jatin Bansal also emphasized on the fact that a completion certificate is not required for the entire project and an occupancy certificate was sufficient for the purposes of Section 11(4)(b) of the Act. He further submitted that the complainant, in her correspondence annexed with the complaint, has not raised any objection to the partial

completion certificate having not been received by her and, therefore, it should be presumed that the complainant was in possession of the partial completion certificate at the time when possession was offered to her. In specific, he mentioned that the electric connections were available to all the allottees and the common facilities were in working condition. He also submitted that the complaint was premature, in as much as, the same was filed on 09.05.2022, even when the date of offer of possession, as per the agreement to sell, expired in September, 2022.

5. I have perused the oral and written submissions made by both sides. The undisputed facts of the matter are that, the complainant had been allotted one shop in the project of the respondent namely, Maya Garden Magnesia, on 14.08.2018. As per the allotment letter, a 260 square feet shop was allotted, bearing unit No.3117, for a consideration of Rs.25,54,000/-. The agreement for sale was executed on 10.06.2019. It is interesting to note that, in clause 1.2 of the agreement for sale the total consideration of the shop has been stated as Rs.14,51,500/-, plus GST, as against the sale price of Rs.25,54,000/-. The complainant has stated to have paid Rs.23,27,500/-. This amount has not been disputed by the respondent. Further clause 7.1 of the agreement to sell clearly submits that, the possession of the commercial unit was to be handed over on or before September, 2022. Clause 7.2 of the agreement states that the promoter shall offer possession in writing after obtaining an occupancy certificate from the competent authority within three months of the same. Clause 7.4 of the agreement mentions that after obtaining occupancy certificate and handing over physical possession the promoter would hand over necessary

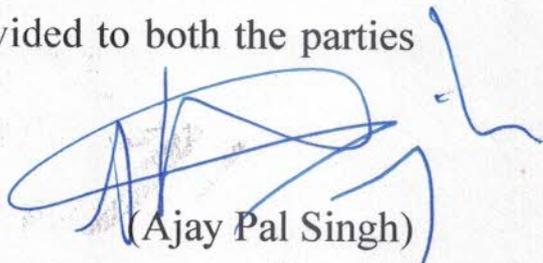
documents and plans to the association of the allottee. It has also not been disputed that possession was offered to the complainant vide letter dated 21.06.2021; much before the due date of September, 2022 mentioned in the agreement to sell. Vide letter dated 27.07.2021, placed at Annexure C4 of the complaint, the complainant objected to the offer of possession on the ground that there were no toilets, no fire fighting equipments, only one lift in the entire block, no drinking water arrangement, no plaster on roofs of shop, no electrical fittings in the shop, no paint on walls in the shop, no glass door fittings, no security, no ACs in the entire block B etc. It was also objected that, out of five blocks in Maya Garden Magnesia, completion certificate/occupancy certificate had been obtained only for three blocks and two blocks were still under construction. It was, therefore, stated that as to how possession can be offered in the given circumstances. Further, in the correspondence annexed by the complainant is a letter dated 01.10.2021, which clearly mentions that Sh. Narinder Arora (Vice President of the respondent) has agreed to show the partial completion certificate/occupancy certificate and has shown his inability to provide the copies of the same. Annexure C7 is legal notice sent by the complainant to the respondent dated 15.03.2022, wherein, the allegations have been made that the respondent has failed to provide the completion certificate obtained from the different authorities, confirmation from lift supplier indicating how many lifts have been installed, details of payments in lieu of assured return, objection to the issuance of credit notes instead of cheques to the bona-fide owners and the fact that the cheques of assured return were not issued in time.

6. From the above correspondence, annexed with the complaint, it is quite clear that the only objection of the complainant was that: (a) that there was no completion certificate for the entire project, (b) the NOCs issued by various departments were not shown to the complainant and (c) there was discrepancy in the issue of cheques, vis-à-vis the assured return and certain infrastructure relating to the common areas was incomplete. At no point of time has the complainant challenged the partial completion certificate/occupancy certificate issued by the Competent Authority for her block. It is also quite clear that the partial completion certificate/occupancy certificate was shown to the complainant. Section 17(2) of the Act clearly states that physical possession is to be handed over to the allottee after obtaining occupancy certificate and thereafter it shall be the responsibility of the promoter to hand over the necessary documents and plans including common areas, to the association of the allottees. In the instant case, an occupancy certificate has been obtained by the respondent on 17.06.2021 i.e. much before offer of possession. It is only subsequent to the receipt of occupancy certificate from the Municipal Council, Zirakpur that possession has been offered in terms of Section 17(2) of the Act. Further, it also needs to be pointed out that the promoter is bound to hand over the documents and plans including the common areas to the association of the allottees and not to each allottee individually. This fact has also been emphasized in Clause 7.4 of the agreement to sell. Therefore, in my view, it was incorrect on the part of the complainant to ask for these documents in her individual capacity. At very best, these documents could only be asked for after taking physical possession. As mentioned supra, as per the agreement to

sell, possession was to be handed over on or before September, 2022, after obtaining occupancy certificate/partial completion certificate from the competent Authority. In the instant case, possession was offered on 21.06.2021, after obtaining the partial completion certificate/occupancy certificate. The complainant has failed to challenge the occupancy certificate before the competent authority. In the circumstances, it is to be assumed that the occupancy certificate has been correctly issued by the competent authority. The provisions of Section 18(1) of the Act clearly stipulate that refund to the allottee cannot be denied if possession is not handed over in terms of the agreement to sell. In the instant case, this vital condition for refund does not stand met by the complainant and, therefore, no refund or interest under the provisions of Section 18(1) of the Act can be awarded. Further, it can also not be denied that the instant complaint is pre-mature, in as much as, it has been filed on 09.05.2022, even though the date for giving possession was September, 2022. Therefore, even on this ground, the complaint is liable to be dismissed. Even otherwise, I find that the complainant has only challenged the possession on the ground that the project does not have a completion certificate and that all the blocks of the project need to be completed before possession is given. I find that this is not a necessary condition for giving possession in the Act: Section 11(4)(b) of the Act clearly states that the promoter shall be liable to obtain the completion certificate or the occupancy certificate from the competent authority and make the same available to the allottees individually or to the association of allottees as the case may be. In the instant case, the facts clearly show that an occupancy certificate was obtained prior to offer of possession and also

shown to the complainant. In the circumstances, the complainant's demand for a completion certificate for the project as a whole is found to be pre-mature, in as much as, the time limit for completion of the entire project under section 4 of the Act was still available to the respondent.

7. In view of above discussions and observations, the complaint is hereby dismissed. File be consigned to record room and copy of the order be provided to both the parties free of costs.



(Ajay Pal Singh)  
Member