

**Before Shri Binod Kumar Singh, Member,
Real Estate Regulatory Authority, Punjab**

Complaint GC No.0415/2022
Date of institution: 10.08.2022
Date of Order: 07.10.2024

1. Prem Nath Gupta
2. Sarishta Gupta

Both residents of House No.765, Sector 8, Panchkula, Haryana-134109

....Complainants

Versus

M/s Omaxe New Chandigarh Developers Private Limited, 10, Local Shopping Centre, Kalkaji, New Delhi-110 019.

(RERA registration no. PBRERA-SAS80-PR0040)

....Respondent

Present : Shri VP Chatrath, Advocate for the complainants

Shri Tejeshwar Singh, Advocate for the respondent

ORDER

This is a complaint filed by the complainants in their individual capacity on 10.08.2022 in Form-M under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016) read with Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules of 2017) against the respondent seeking refund of Rs.1,16,41,241/- along with interest thereon paid towards purchase of flat No.TLC/EMERALD-B/Fifteenth/1502 on 15th floor in the project "The

Lake – Omaxe New Chandigarh, Mullanpur, District SAS Nagar, Mohali, Punjab”, being developed by the respondent.

2. The brief facts of the case are that the respondent invited applications for allotment of residential flats through various advertisements and publicity material in their project namely “The Lake - Omaxe New Chandigarh, Mullanpur, District SAS Nagar, Mohali, Punjab”. A copy of their brochure along with the price list and payment plan has been annexed with the complaint. It is submitted that the complainants had paid a sum of Rs.4,79,846 on 03.06.2015 and they were allotted “Flat No. TLC /Emerald – B / Fifteenth/ 1502 on 15th Floor with total area of 2760 Sq. Fts./ 256.41 Sq. Mtr.” vide allotment letter dated 18.07.2015. It is alleged that thereafter an agreement of allotment containing terms and conditions was signed between the complainants and respondent (not available on record). It is further submitted that the basic price of the flat was fixed at Rs.11,564,400.00. It is also submitted that as per condition no.40(a) the construction was to be completed within 36 months. The complainants made further payments as per the payment plan and paid Rs.1,16,72,096.00. It is further alleged that the complainants visited the site on 20.07.2022 and noticed that the construction was still in progress. Thereafter, the complainants served a legal notice on 29.07.2022 upon addressee no.1 (respondent) asking for refund of their deposited amount but received back without service. It is further stated that notice sent to addressee no. 2 has not been received back till date and it is presumed that the respondent no.2 has been served. It is prayed by the complainants that respondent be directed to refund the amount of Rs.1,16,41,241/- along

with interest thereon @ 10% per annum from the date of payment till the date of refund.

3. Upon notice, respondent appeared through Shri Tejeshwar Singh, Advocate and submitted written submission dated 06.02.2023 on behalf of the respondent.

4. It is submitted that the respondent company's name has been changed from '*Omaxe Chandigarh Extension Developers Pvt. Ltd.*' to '*Omaxe New Chandigarh Developers Private Limited*' having its registered address at 10, Local Shopping Centre, Kalkaji, New Delhi – 110019 and this reply solely referred to the respondent company.

5. It is stated that the respondent is a renowned builder and have launched real estate projects successfully across the country including the project 'The Lake' a premium segment group housing project part of mega residential project 'Omaxe New Chandigarh', PR7 Airport Road, New Chandigarh, Distt. SAS Nagar, Punjab.


6. It is submitted that an Allotment Letter (Annexure C-3) under the Subvention Scheme was executed between the complainants and respondent on 18.07.2015 whereby they were provisionally allotted Flat no. TLC/Emerald-B/Fifteenth/1502 in the residential project 'The Lake' situated in 'Omaxe New Chandigarh', SAS Nagar, Mohali (hereinafter referred to as the "Apartment" or the "Unit"). Allotment Letter has been admitted annexed by the Complainants as Annexure C-3. The learned Counsel for the respondent has also reproduced relevant Clauses no.1, 3, 14, 30, 32, 35, 40(a) (b), 62 and 63 of the Allotment Letter which are not being repeated here for the sake of brevity.

7. It is further mentioned in the reply that the complainants obtained a loan of Rs.97,00,000 under the "subvention linked payment plan". As per this plan, the bank/financial institution (State Bank of India, RACPC, Chandigarh) pays the instalments on behalf of the complainants to the respondent up to the sanctioned amount of loan and the complainants have to pay the rest amount. Under the subvention linked plan, the complainants, bank, and respondent executed a tripartite agreement on 13.08.2015 (Annexure R-2). As per this tripartite agreement the respondent had undertaken to bear the Pre-EMI Interest on behalf of the complainants for the period agreed to between the parties (i.e upto July 2018, a period of approximately three years). It is further alleged that the complainants have concealed this fact in this complaint. The learned Counsel for the respondent has attached a copy of the Loan Sanction Letter dated 06.08.2015 as Annexure R-1. As per Clause 2A(iv) of the Tripartite Agreement, the liability of the Complainants to pay the EMI amount was not subject to and was irrespective of the stage of construction and/or the date of handing over of possession. It is further mentioned that as per the Tripartite Agreement, if there is any refund asked for by the complainants that shall be in favour of the lender Bank as the unit was mortgaged with the lender bank. It is further alleged that the complainants even failed to pay their dues as per the Allotment Letter, despite issuance of various reminders and if paid were paid with a delay knowing very well that the complainants had to make part payments only whereas the Bank was making a bulk of the payment to the respondent. It is further submitted that there was an amount of Rs.1,21,687.50/- (not including maintenance/registration & conveyance charges) were pending (on the date of filing reply dated

06.02.2023) as per the Account Statement. (Copies of the payment demand notices, reminders/outstanding Annexure R-3 (Colly). It is further submitted that the respondent has received a total amount of Rs.1,25,56,924.12/-(Rs.1,16,72,096.66/- + GST/ST Rs.8,84,827.46/-) out of which, Rs.62,71,176/- had been paid by lender bank and the rest of Rs.62,85,748.12/- had been by the complainants. The complainants have wrongly stated that they have paid the entire amount. It is further stated that the complainants have neither impleaded the lender Bank as a necessary party nor attached the tripartite agreement executed between the complainants, bank and respondent. As agreed between the parties the respondent has paid a total amount of Rs.9,33,914/- on behalf of the complainants on account of Pre-EMI Interest (Statement of Account Annexure R-4).

8. It is further submitted that the period of completion of the project mentioned in Allotment Letter is not a binding. Learned Counsel for the respondent relied upon Clause 40(a) of the Allotment Letter *"The Company shall try to complete the development/construction of the Unit/Project within 36 (Thirty Six) months from the date of signing of this Allotment Letter by the Allottee(s) or approval of the building plans, whichever is later and within such further extended grace period of 6 (Six) months. Completion of development of the Unit within such 42 (Forty Two) months is subject to force majeure conditions.....The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State Legislative Body"*.

9. It is also submitted that the complainants have filed the present complaint on the false ground seeking refund and interest etc. Here again the respondent relied upon Clause 40(a) of the allotment letter. It is further submitted that COVID-19 pandemic had a particular effect on the construction work which was at a complete halt for a number of months and for over a year, could not resume due to lack/delay of incoming material and shortage of labourers/workers. To strengthen his case further, learned Counsel for the respondent referred the advisory issued by the Ministry of Housing & Urban Affairs (Housing Section), Government of India on 13.05.2020 and thereafter also RERA, Punjab issued a '*List of projects where extension of six months is granted due to COVID-19, as per Circular dated 28.10.2020*', in which the project of the respondent is duly mentioned (Annexure R-5 and Annexure R-6). It is further submitted that the period of 42 months is merely indicative and not mandatory. Learned Counsel for the respondent relied upon Section 19(6) and Section 19(7) of the Act of 2016 that "(6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale...*" and

 "(7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)*"

10. He has also reproduced Clauses 10 and 32 of the Allotment Letter to the effect that "10. *The Allottee(s) hereby agrees to pay to the Company in timely manner the Basic Cost, Additional Cost, Preferential location charges, other charges etc....*" and

"32. It is agreed by the Allottee(s) that the timely payment of installments and other allied charges/cost indicated herein is the essence of this Allotment Letter...".

Learned Counsel for the respondent further relied upon Clause 40(i) of the allotment letter which clearly states, "Allottee(s) further understands and agrees that timely completion of the Project is entirely dependent upon his/their payment of due amounts as per payment plan opted by him/them and incase of default in making payment of due amount within stipulated period, than the same shall not only hamper the overall progress of the Project, but will also be prejudicial to the interest of all Allottee(s) of the Units of the Project"

Learned Counsel for the respondent further relied upon Clause 35, that "the Allottee(s) gives the respondent the right to forfeit the earnest money along with any interest on installments, interest on delayed payment due or payable, brokerage, dealer commission etc. in case of cancellation in the event of the failure of the Allottee(s) to perform their obligations. He has also referred Section 11(5) of the Act of 2016 which 'gives the promoter the right to cancel the allotment in terms of the agreement for sale'." Learned Counsel for the respondent stressed that under Clauses 35 and 40(i) of the Allotment Letter, the respondent retains the right to cancel allotment and forfeit the earnest money and any other amount of a non-refundable nature.

11. Learned Counsel for the respondent also relied upon Section 19(4) of the Act of 2016 to the effect that an allottee shall only be entitled to claim a refund in accordance with the terms of agreement for sale, (herein no agreement for sale has been executed between the present

parties) hence, the complainants have defaulted in complying with the terms and conditions of the Allotment Letter and also of the Act of 2016. It is also submitted that the complainants were defaulters, they cannot impose any illegality upon the respondent and also that huge amounts of interest have accrued against the complainants and the respondent is entitled to delay interest on the said amount. It is also submitted that if any refund is allowed, the first right of refund would be of the lender Bank/State Bank of India, RACPC, Chandigarh and further, the respondent would be entitled to deduction/adjustment in their favour of Pre-EMI Interest of total Rs.9,33,914/- paid by the respondent to the Bank on behalf of the complainants. The learned Counsel for the respondent also relied upon the matter of "*Arvind Sharma v. Country Colonisers Pvt. Ltd.*" (GC No.1088 of 2018 decided on 01.10.2019) decided by this Authority wherein it has already been held that Pre-EMI Interest paid by the builder (respondent) on behalf of an allottee (complainant) is liable to be adjusted/refunded in favour of the builder (respondent). He has also relied upon numerous judgments passed by the Hon'ble State Consumer Disputes Redressal Commission, Punjab and Hon'ble National Consumer Disputes Redressal Commission and cited one case titled "*Narinder Kumar Ahuja v. Country Colonisers Pvt. Ltd.*", (CC/295/2018) by SCDRC Punjab, and "*Country Colonisers Pvt. Ltd. v. Abhishek Diwan*", (MA No. 344/2019 in FA/1615/2018) by NCDRC. Learned Counsel for the respondent further stressed that the sacrosanct principle of '*restitutio in integrum*' would also apply to the present issue under consideration.

12. Learned Counsel for the respondent further raised objection about non-joinder of necessary party i.e '*State Bank of India, having its*

Registered Address at State Bank Bhavan, Corporate Centre, Madame Cama Road, Mumbai, Maharashtra – 400 021 and its Branch Office at RACPC Chandigarh' from where the complainants availed the loan (home) and executed Tripartite Agreement on 13.08.2015. It is the lender bank who can provide complete details of disbursement of funds etc. Another objection raised by the respondent is regarding concealment of facts as the complainants failed to mention regarding taking of loan taken under the subvention scheme and execution of the Tripartite Agreement between the complainants, respondent and lender bank. It is alleged that the complainants have deliberately hidden that they owe a huge amount of Rs.1,21,687.50 to the respondent. Learned Counsel for the respondent further stressed upon Clause 35 of the allotment letter whereby cancellation process can be initiated by the allottees within a period of six (6) months from the date of allotment because a massive amount of resources, money and time were dedicated to the construction of the unit. It is further submitted that the complainants were fully aware that if cancellation process was adopted by them, their earnest money would be forfeited in terms of Section 11(5) of the Act of 2016 as well as Clause 35 of the Allotment Letter. However, in order to defeat such forfeiture, present complaint has been by the complainants. The complainants are only entitled to adopt the procedure of cancellation of the unit in accordance with the Allotment Letter.

13. Another objection raised by learned Counsel for the respondent is with regard to limitation. It is stated that the alleged period of possession as per the complainants was 31.12.2018, therefore, the complaint should have been filed within 3 years i.e on or before 31.12.2021. Further, the last payment made on behalf of the

complainants was in April 2019 and if this date is taken into consideration then the complaint should have been filed before April 2022. However, the present complaint has been filed on 12.08.2022 and is thus grossly time-barred and is liable to be dismissed.

14. Learned Counsel for the respondent also stated that there is an arbitration clause in the agreement between the complainants and respondent whereby all or any dispute arising out in the terms of the Allotment Letter shall be settled amicably by mutual discussion failing which the same shall be referred to the Arbitrator under the Arbitration and Conciliation Act, 1996 and proceedings thereof shall be held at Delhi/New Delhi. Thus, the present dispute has to be adjudicated upon in accordance with Clause 62 of the Allotment Letter.

15. Learned Counsel for the respondent further contended in favour of his case i.e time is never presumed to be the essence of a contract involving the sale and purchase of immovable property and construction as per the law laid by the Hon'ble Supreme Court in "*Chand Rani v. Kamal Rani*", (1993) 1 SCC 519; there are complicated questions of fact involved in the present case i.e whether payments were made or not or there was any delay, and whether such lapse was on the part of the complainants or the respondent, required evidence from both the sides to be adjudicated by Civil Court; the complainants signed the Allotment Letter, and undertaken to abide by its term and conditions, and now they cannot challenge its terms and conditions; the complainants have failed to point out a single provision of the Act of 2016 violated by the respondent. Rather, the complainants were the defaulters in this case, having failed to abide by the terms and conditions of the Allotment Letter as well as Section 18 of the Act of 2016.

16. On parawise reply, while repeating the contents of the above preliminary submissions, it is denied by the respondent that the claim falls within the jurisdiction of this Authority and relied upon Clause 14 of the Allotment Letter which states that "*The Allottee(s) acknowledges that the Company has readily provided all information, clarifications as required by him/her and that he/she has not relied upon and is not influenced by any architect's plans, sales plans, sale brochures advertisements, representations, warranties...*" However, the complainants were trying to mislead this Authority by relying upon the contents of the said brochure. Learned Counsel for the respondent further denied that the Basic Sale Price of the unit was Rs.1,14,40,500. In fact, it was Rs.1,15,64,400 attached with the brochure as per Annexure C-2, in Annexure B. It is the prayer of the respondent that the complainants are not entitled for any relief sought and complaint be dismissed with costs.

17. The learned Counsel for the complainants filed rejoinder on 11.04.2023 reiterating the contents of their complaint and controverted the contents of the reply filed by the respondent. It is submitted by the learned Counsel for the complainants that the respondent has not confirmed whether the project is ready, or confirmed the likely date of completion for handing over possession of the unit. It is further submitted that the complainants have paid the entire cost of the unit and the balance due is NIL and the entire loan liability has been cleared by them as the respondent stopped paying pre-EMI and the bank started deductions from the NRE savings. It is further alleged that the bank had intimated that the loan account of the complainants was becoming 'non-performing asset'. The learned Counsel for the

complainants further stated that there was specific commitment from respondent for completing the project within 42 months. It is further contended that the respondent has not denied the status of construction shown in Annexure C-6 to C-8 (photographs) and still the project is incomplete. It is also stated that it is wrong to suggest that the complainants are not entitled for any refund.

18. In reference to preliminary submissions it is further stressed that the complainants had cleared their loan liability. The complainants denied that the respondent is entitled to recover Rs.1,21,687.50 from them. The complainants argued that the respondent has received Rs.1,25,56,924.12 and they are entitled to receive back this amount. The learned Counsel for the complainants attached letter dated 25.05.2018 written by the Assistant General Manager, State Bank of India, RACPC, Sector 17-B, Chandigarh addressed to the respondent requesting therein to refund the excess amount of Rs.2,46,381/- directly to the complainants. A certificate "to whom it may concern" dated 18.02.2019 issued by the Chief Manager, State Bank of India, NRI Branch Chandigarh certifying *"that the home loan account number 35135531257 in the name of Mr. Prem Nath Gupta and Sarishta Gupta for Rs.97,00,000/- maintained at SBI, NRI Chandigarh Branch has been closed on 18.02.2019 and there are no other dues outstanding in their in this account."*


19. It is noted that as per interim order dated 14.03.2023 a copy of the reply was given to the complainants but the same was not provided to the then Bench of Member (APS) and it was ordered to provide the same by evening and the matter was adjourned to 11.04.2023. On this date rejoinder was filed and a copy thereof was supplied to opposite side

and the matter was adjourned to 16.05.2023 for arguments. From the intervening period from 16.05.2023 till 18.04.2024 the parties tried to settle the matter mutually but without any positive result and the matter was ordered to be listed on 27.05.2024 for arguments & finally arguments were addressed by both the parties on 23.09.2024 and the matter was reserved for order.

20. While arguing the learned Counsel for the complainants stated that they have been allotted flat in the project "the lake" and paid Rs.1,25,56,924.12. As per Condition no.40(a) of the allotment letter dated 18.07.2015 possession was to be delivered within 42 months (36 months + further extended period of 6 months) i.e by 17.01.2019. However, the same was not handed over to them despite making full payment of the flat. Even the project is not complete and the complainants cannot be asked to wait for indefinite period. Learned Counsel for the complainants further argued that the loan account of the State Bank of India is already cleared by them. Now the complainants are not interested in the project and prayed for refund of their deposited amount along with interest thereon.

21. On the other hand, the learned Counsel for the respondent confirmed the allotment of flat in favour of the complainants. He has argued that this complaint is bad for mis-joinder of the necessary parties as the complainants have not impleaded the lender bank from whom they availed loan of Rs.97.00 lakhs, and concealed the fact from this Authority that the flat is mortgaged with the lender bank and they have executed Tripartite Agreement with the respondent and State Bank of India, RACPC Branch, Chandigarh. The learned Counsel for the respondent acknowledged the receipt of Rs.1,25,56,924.12 from the

complainants and argued that a sum of Rs.9,33,914/- as agreed between the parties were paid by the respondent on behalf of the complainants towards pre-EMI interest for three years. He has relied on terms and conditions of the allotment letter dated 18.07.2015 and stated that the period of 42 months for delivery of possession is indicative and not mandatory. He has also cited Covid-19 pandemic due to which the project was not completed and relied on advisory dated 13.05.2020 issued by the Ministry of Housing and Urban Affairs (Housing Section), Government of India and thereafter Circular dated 28.10.2020 issued by this Authority. The learned Counsel for the respondent further argued that the complainants have grossly defaulted in making their due payments. He further argued that this complaint is barred by limitation and also there is an arbitration clause whereby all disputes are to be settled mutually, and if not, shall be referred to the Arbitrator as per Arbitration and Conciliation Act, 1996, as such this Authority did not have the jurisdiction to entertain and try the complaint. It is further argued by the learned Counsel for the respondent that on account of delayed payment, huge amount of interest accrued in favour of the respondent and prayed that the complainants are not entitled for any refund and interest thereon and prayed that the complaint be dismissed, he concluded. No other issue has been pressed.



22. The undersigned considered the submissions of the parties and also perused the documents annexed by both the parties.

23. There are no dispute about allotment letter dated 18.07.2015 issued for Flat No.TLC/EMERALD-B/Fifteenth/1502 on 15th floor in the project "The Lake – Omaxe New Chandigarh, Mullanpur, District SAS

Nagar, Mohali, Punjab”, possession within 42 months as per allotment letter’s dated 18.07.2015 condition no.40(a), availing of loan of Rs.97.00 lakhs under subvention scheme from State Bank of India, RACPC Branch, Chandigarh, execution of tripartite agreement dated between the complainants, respondent and State Bank of India on 13.08.2015, payment of pre-EMI interest by the respondent on behalf of the complainants for the period upto July 2018, receipt of Rs.1,25,56,924.12 by the respondent from the complainants, and deductions of pre-EMI of Rs.9,33,914/- by SBI in its payment to respondent.

24. The only prayer of the complainants is refund of their deposited amount along with interest thereon. The ground taken by the complainants for refund is that despite making the entire payment, the respondent/promoter failed to complete the project and deliver possession of the flat within the stipulated period of 42 months i.e by 17.01.2019. Perusal of photographs attached by the complainants with their complaint as Annexure C-5 to C-8 corroborated this fact. On the other hand, it is the case of the respondent/promoter that due to default in making the timely payments by the complainants and Covid-19 pandemic they were unable to complete the project.

25. The objections raised by the respondent regarding the complaint not filed within limitation, it is noted that there is no such provision under the Act of 2016 restricting an allottee by any such limitations. The complainants have attached a letter dated 18.02.2019 issued by the lender bank State Bank of India to the effect that there are no other dues outstanding in their (complainants) names and the present complaint was instituted on 10.08.2022. Since the possession of the plot

as promised was not delivered, the cause of action is continuing. No doubt there is delay of few months but this delay does not defeat the claim of the complainants.

26. Further the argument raised by the respondent/promoter that due to Covid-19, they were unable to complete the project. It is worth to note that as per Clause 40(a) of the allotment letter dated 18.07.2015 possession was to be delivered within 42 months i.e. by 17.01.2019. However, the impact of Covid-19 started in the month of March 2020. The respondent/promoter has also mentioned in his reply about the advisory dated 13.05.2020 issued by Government of India along with Circular dated 28.10.2020 issued by this Authority. Thus, this argument has no substance and is rejected accordingly.

27. Another objection raised by the respondent about the arbitration clause in the allotment letter, it is to be noted that mere presence of arbitration clause in it executed between the complainants and respondent does not preclude the jurisdiction of this Authority, as per the law settled by the Hon'ble Apex Court in the case of ***Emaar MGF v/s Aftab Singh*** (Review petition nos. 2629 and 2630 of 2018). This argument of respondent is accordingly rejected.

28. Another argument that the period of 42 months from the date of allotment to deliver possession was not mandatory. However, now the law is settled upto the Hon'ble Supreme Court e.g. (in "*Imperia Structures Ltd. v. Anil Patni and Anr*" - Civil Appeal 3581-3590 of 2020) **that the relevant date for delivery of possession to an allottee is the date mentioned in the agreement for sale and not the date**

till which the registration of the project is valid (emphasis supplied).

29. It is also worth to note that the Hon'ble Supreme Court in the matter of "M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and Ors." (Civil Appeal No.6745-6749 of 2021), while interpreting Section 18 of the Act, in "Imperia Structures Ltd. Vs. Anil Patni and Another" has held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter(respondent) and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement. In para 25 of the judgement dated 11.11.2021 being later than the referred judgement of Hon'ble Apex Court in the case of "DLF Home Panchkula Pvt. Ltd." dated 10.05.2019 the Hon'ble Supreme Court held as under:"

*"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". **The right so given to the allottee is unqualified** and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of*

Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

30. Thus, this argument regarding 42 months stipulated in the allotment letter is also devoid of merit and is accordingly rejected.

31. Regarding another objection raised on behalf of the respondent that if refund is allowed, first right is of the State Bank of India, from where the complainants availed the loan of Rs.97.00 Lakhs. This argument has also no force as the complainants have attached a certificate dated 18.02.2019 issued by the State Bank of India, NRI Branch, Chandigarh that *"the home loan account number 35135531257 in the name of Mr. Prem Nath Gupta and Sarishta Gupta for Rs.97,00,000/- maintained at SBI, NRI Chandigarh Branch has been closed on 18.02.2019 and there are no other dues outstanding in their in this account."* Thus, this argument has no legs to stand and is accordingly rejected.

32. The another objection that the complainants have not impleaded State Bank of India (RACPC Branch, Chandigarh) as a necessary party. It is noted that the present complaint was filed on 10.08.2022 and the certificate dated 18.02.2019 issued by the said bank to the effect that the home loan account number 35135531257 in the name of the complainants has been closed on 18.02.2019, i.e prior to the filing of the present complaint. It is held that there is no need to implead lender Bank/State Bank of India as a necessary party.

33. As a sequel of above discussion, it is held that the complainants are entitled for refund of their amount along with interest as per Rule 16 of the Punjab State Real Estate (Development and Regulation) Rules,

2017. The respondent has admitted the receipt of payment of Rs.1,25,56,924.12 (Rs.1,16,72,096.66 + GST/ST Rs.8,84,827.46) from the complainants admitted by it in para 8 of their reply/written statement.

34. Accordingly, the respondent is directed to refund the amount of Rs.1,25,56,924.12 with interest at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of 2017 from the date of deposit till realization.

35. Since the respondent had already paid a total amount of Rs.9,33,914/- on behalf of the complainants on account of Pre-EMI Interest to the lender bank and this amount shall be set off from the due amount.

36. The respondent is also further directed that the resultant refund along with interest should be made within the statutory time i.e ninety days stipulated under Rule 17 of the Rules, 2017 from the date of receipt of this order.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab