

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA
MARG, CHANDIGARH.**

1. Complaint No.AdC 1804/2020
Date of Decision: 29.10.2021

Ajay Sharma son of Shri Tilak Raj Sharma, resident of Flat No.859,
Top Floor, Gillco Palms, Gillco Valley, Sector 115, Mohali.

.....Complainant

Versus

1. M/s Gillco Developers & Builders Pvt. Ltd., Gillco Valley, Sector
127, National Highway No.21, Sahibzada Ajit Singh Nagar
(Mohali), Punjab.

2. Mr. Ranjit Singh Gill, House No.2169, Phase 7, Sahibzada Ajit
Singh Nagar (Mohali), Punjab.

.....Respondents

2. Complaint No.AdC 1805/2020
Date of Decision: 29.10.2021

Vijay Sharma son of Shri Tilak Raj Sharma, resident of village
Plassi PO Rangas, Tehsil Nadaun, Hamirpur (HP).

.....Complainant

Versus

1. M/s Gillco Developers & Builders Pvt. Ltd., Gillco Valley, Sector
127, National Highway No.21, Sahibzada Ajit Singh Nagar
(Mohali), Punjab.

2. Mr. Ranjit Singh Gill, House No.2169, Phase 7, Sahibzada Ajit
Singh Nagar (Mohali), Punjab.

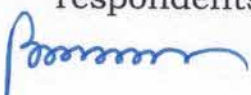
.....Respondents

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

Present: Shri Mahendra Pal, Advocate, representative for the
complainant.
Shri Manpreet Longia, Advocate, representative for the
respondents no.1 and 2.

ORDER

1. Both the complaint cases have been taken up together for
decision as both complaints relate to the same project and the
respondents are common and moreover common question of law



and facts are involved in both the cases and their separate decisions will lead to repetition of the discussion.

2. Both the Complainants Ajay Sharma and Vijay Sharma filed these complaints against respondent M/s Gilco Developers & Builders Pvt. Ltd. seeking compensation on account of delay in delivery of possession and interest etc. under Section 31 of the Real Estate (Regulation and Development) Act 2016 (hereinafter to be referred as "the Act")

3. In complaint No.1804 of 2020, it was the case of the complainant that they were allotted Flat Nos.859 (Top Floor), super area 1625 Sq. ft. in '**Gilco Palms**', Gilco Valley, Sector 115, Mohali vide allotment letter dated 26.11.2015 (Annexure A-1); that the apartment buyers agreement was executed between the parties on 26.11.2015 (Annexure A-3) that as per Clause 36 of the said apartment buyer agreement the possession of the flat was to delivered within 14 months + two months grace period from the date of execution of the agreement i.e. by 26.3.2017 subject to making timely payments; that possession of the flat was delivered vide letter dated 14.5.2018 (Annexure A-2) i.e. after delay of 16 months; that as per Clause 39 of the apartment buyers agreement, in the event of delay in delivery of possession of the flat, the builder would pay compensation @ Rs.5/- per sq. ft. for every month delay beyond 16 months from the date of signing of the agreement, which would be adjusted at the time of calculation of the final bill; that as per terms and conditions of the apartment buyer agreement, complainant was entitled to compensation of Rs.1,30,000/- on account of delay in delivery of possession; that complainant issued legal notice dated 21.10.2019 (Annexure A-4)



for grant of compensation within one month but to no avail. Hence the present complaint.

4. Similar facts were pleaded in complaint case No.1805 of 2021 except flat number in which flat no.858 (Top Floor), super area 1625 Sq. ft. in '**Gilco Palms**', Gillco Valley, Sector 115, Mohali was allotted to the complainant Sh. Vijay Sharma,.

5. Upon notice, respondent appeared through authorised representative and filed written replies pleading similar averments in both the complaints raising the preliminary objections to the effect that the present complaint was liable to be dismissed as at the time of delivery of possession on 14.5.2018 all the accounts between, the parties were settled and no payment was outstanding against either of the parties, which was clear from Annexure A-2 appended with the complaint; that the complaint was filed after more than 2-1/2 years of taking over possession; that the complaint was barred by limitation; that the complaint was not maintainable in view of the judgment of the RERA Authority in Complaint no.3 of 2017-**Bikramjit Singh & others Vs. State of Punjab**; that the complainant had concealed material facts as on many occasions the complainants delayed the payment of installments and upon issuing demand letter/notices had paid the installments; that the complainant had no cause of action to file the present complaint, as the date for completion of the project declared to RERA Authority by the promoter at the time of registration of the project was 31.8.2021; that intricate question of law and facts were involved which could not be adjudicated in the complaint filed under the Act. On merits it was stated that complainant himself defaulted in making timely payments and as such he was not entitled to compensation under Clause 39 of the




apartment buyers agreement. Further, while denying the rest of the averments of complaint, prayer was made for dismissal of complaint.

6. The violations and contraventions contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.

7. That respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as summarized above and the elaboration thereof shall be made in the discussion.

8. The objection on behalf of the respondent that no cause of action had arisen to the complainants, as the time for completion of project had been extended by the RERA Authority till 31.08.2021 at the time of registration of the project is devoid of any force because the Hon'ble Bombay High Court in a case titled **Neel Kamal Realtors Suburban Pvt. Ltd. (supra)** had been very categorical with regard to the agreements entered between the parties even prior to coming into force of this Act and in this respect the paragraph 119 is reproduced herein below:-

“**119.** Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the



proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and an allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature.”

9. In the above said case, the Hon'ble Bombay High Court had also made this point clear in paragraph 256 and 261 which are reproduced below:-

256. Section 4(2)(1)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)(C) he is not absolved of the liability under the agreement for sale.

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261. In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the



provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1) (a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

10. In view of above observations of Hon'ble Bombay High Court, the plea of the respondents that they had given a declaration for completion of project by 31.8.2021 while registering the project with this Authority, is not tenable as the agreement between the parties was admittedly executed on 26.11.2015 and date given by the promoter to the allottees for handing over the possession of the flat was within 14 months plus grace period of two months i.e. upto 26.03.2017. At that time, RERA was not in force, therefore, the promoter cannot take the benefit of the completion date of the project i.e. 31.8.2021 given at the time of registration of the project rather the date of completion of the project as per stipulation in the flat buyer agreement dated 26.11.2015 shall be applicable according to which the possession



of the apartment on completion of the project was to be handed over upto 26.03.2017. The argument is accordingly repelled.

11. Another objection taken on behalf of the respondents was that at the time of delivery of possession of the flats to the complainants on 14.5.2018 all the accounts between the parties were finally settled and no payment was outstanding against either of the parties and therefore, it amounted to full and final settlement between the parties. The complainants were thus estopped from agitating that any amount towards delay compensation remained payable. Reliance in this behalf was placed upon the judgment of Punjab State Consumer Disputes Redressal Commission in **Nirmala Devi Vs. Life Insurance Corporation of India and others** decided on 3.8.2009.

12. The argument advanced on behalf of the respondents is however without substance. At the time of delivery of possession of flats to the complainants on 14.5.2018 two documents i.e. possession letter and handing over/taking over of flats were prepared bearing signatures of the parties on the printed proformas. However close scrutiny of the possession letters dated 14.5.2018 leaves no manner of doubt that these documents simply contain the assertion that flats in question were complete in all respects and ready for possession, which was being offered and that no dues are pending for the said flats against the allottees. Likewise the second document prepared on the same date i.e. 14.5.2018 on the printed proforma under the signatures of the parties also relates to the various details regarding the completion of flat with fixtures etc. Though there is an averment in the shape of certificate that "all the accounts in respect of sale/purchase of this flat have been settled and no payment is now outstanding



against either of the two parties". It is well settled that a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder and builder could not seek to bind the purchasers with one-sided contractual terms. Reference in this behalf may be made to the authority of the Apex Court in ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019.*** Second in the said two documents there is no specific averment that the claim of the complainants on account of delay of almost 14 months in delivery of possession of the flats in question had been adjusted in compliance of Clause 39 of the flat buyers agreement dated 26.11.2015 executed between the parties. Therefore, execution of the said documents does not in any manner leads to inference that any settlement between the parties had taken place in respect of claim of the claimants, on account of almost 14 months delay in delivery of possession of the flats in question had been settled. The authority in ***Nirmala Devi's case*** (supra) relied upon the respondents is distinguishable from the facts of the present cases because in that case the amount had been accepted by the complainant in full and final settlement of claim against insurance company.

13. Further objection taken on behalf of the respondents was that when possession to the complainants of respective flats had been delivered to the satisfaction of the allottees, the contract between the parties would come to an end and there being no relation between the parties, the complaints were, therefore, not



maintainable. As already noticed above simply by delivering the possession of the flats to the allottees without settlement of their claim on account of delay in delivery of possession of the flats as per stipulated terms and conditions in the flat buyers agreement by the promoter, it cannot be said that the claim of the present complainants did not subsist or that the complaints were not maintainable. The argument is accordingly repelled.

14. Another objection taken on behalf of the respondents was that the present complaints did not satisfy the requisite conditions for maintainability as per ratio of judgment of the RERA Authority in **Complaint No.3 of 2017-Bikramjit Singh & Ors. Vs. State of Punjab.** There is no force in the contention on behalf of the respondents in this behalf because the authority in **Bikramjit Singh & others'** case (supra) relates to the project which are unregistered, whereas admittedly, the project of the case in hand was got registered with the authority as per provisions of the Act. The argument is thus repelled.

15. Another objection taken on behalf of the respondents-promoter was that cause of action accrued to the complainants as per their own showing on 26.3.2017 and the present complainants had been filed on 22.12.2020 i.e. after almost three years and nine months thereafter and therefore, the complaints were hopelessly barred by delay and laches having been filed after lapse of period of three years prescribed under Article 113 of the Limitation Act, 1963. However, this submission also lacks merit because RERA Act is a special legislation with particular aims and objects covering certain issues and violations relating to housing sector. There is no period of limitation provided under Section 18 of the Act for filing the complaint for seeking relief of refund and



interest etc. By virtue of Section 29 of the Limitation Act, 1963 period of limitation as assigned under the Limitation Act, 1963 is not applicable to RERA Act which is special enactment; reference in this connection may be made to **Consolidated Engg. Enterprises Vs. Irrigation Department 2008(7) SCC 169** wherein the Hon'ble Supreme Court was pleased to hold that the Limitation Act would not apply to quasi-judicial bodies or Tribunals. To the same effect is the authority of the Apex Court in **M.P.Steel Corporation Vs. Commissioner of Central Excise 2015(7) SCC 58.** Thus, the complaints are not barred by delay and laches.

16. Argument on behalf of the complainants was that the complainants complied with the terms and conditions of the flat buyers agreement executed between the parties but the respondents-promoter failed to complete the project and hand over the possession of the respective flats by the stipulated date i.e. 26.3.2017 as per clause 36 of the flat buyers agreement. Further argument was that possession of the respective flats were offered to the complainants on 14.5.2018 after prolonged delay and therefore, the complainants were entitled to compensation for delay possession at the rate of Rs.5/- per sq. ft. per month from the date of delivery of possession i.e. 26.3.2017 to 14.5.2018 on which date the possession of the flats was actually delivered.

17. On the other hand arguments on behalf of the respondents-promoter was that the complainants themselves defaulted in making regular payments, which were being paid by the complainants after delay and on issuing demand notices and thus they were not entitled to claim any compensation for delayed possession.



18. It is admitted that the complainants were allotted flats No.858 and 859 in the respondent project and flat buyers agreement were executed between the parties on 26.11.2015. It was also admitted that as per Clause 36 of the flat buyers agreement possession of the respective flats were to be delivered within 14 months plus two months grace period from the date of execution of the flat buyers agreement i.e. on or before 26.3.2017. There is further no dispute that possession of the flats were not handed over to the complainants within stipulated time as per flat buyers agreement and rather the possession of the respective flats were delivered to the complainants on 14.5.2018 after delay of almost 13 months 20 days. Respondents-promoter, however, had not pleaded any justification for the delay in delivery of possession nor claimed any ground for seeking exemption for the delay period in completion of the project and handing over the possession of the flats. However, it was asserted on behalf of the respondents-promoter that complainants themselves had committed default in payment of installments which were being paid after delay and on issuance of demand notices and therefore, the complainants were precluded from seeking relief of compensation on the ground of delay in delivery of possession. It may be so but when the respondents-promoter accepted the delayed payments and chose not to take any action due to said default as per terms and conditions of flat buyers agreement, he cannot take the defence on the ground of delayed payment of installments to the case of the complainants based on delay in delivery of possession. Therefore, it cannot be said that any fault was attributable on the part of the complainants and rather the respondent himself admitted the delay in completion of project. Clause 39 of the flat buyers



agreement deals with the compensation payable in the event of builder delays in handing over possession beyond the period stipulated under Clause 36 of the flat buyers agreement. Clauses 36 and 39 runs as under:-

“36. That the builder subject to force majeure, shall offer the possession of the said apartment to the buyer within 14 months from the date of this agreement with a grace period of 2 months subject to the payment of said consideration and other charges, strictly in accordance with the payment schedule.

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39. That in the event the builder delays in handing over possession, the builder shall pay compensation @ Rs.5/- per sq. ft. for every months delay beyond 16 months from the date of signing of agreement, which shall be adjusted at the time of calculation of the final bill.”

19. A bare reading of Clause 39 quoted above leaves no manner of doubt that it provides for payment of compensation to the allottees if the possession is delayed from the stipulated period prescribed in the flat buyers agreement at the rate of Rs.5/- per sq. ft.

20. In view of the above discussions, both the complainants are entitled to claim compensation on account of delayed possession at the rate of Rs.5/- per sq. ft. for the delayed period i.e. from 26.3.2017 to 14.5.2018 (13 months 20 days).

21. As the respondent promoter committed default in delivery of possession as per stipulation in the apartment buyers agreement, the complainants/purchasers had the option of either to seek relief



as per the terms and condition of the apartment buyers agreement for delayed possession or to seek relief of interest by way of compensation as per proviso of Section 18(1) of the Act read with Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% and the complainants opted to claim the relief as specified in Clause 39 of the apartment buyers agreement @ Rs.5/- per sq. ft. for every month's delay and therefore the complainants are not entitled to any further amount of compensation.

22. In view of the above discussions and observations, respondent-developer was liable to pay the amount to each of the complainant on account of delay in delivery of possession of the flats in question as per Clause 39 of the flat buyers agreement at the rate of Rs.5/- per sq. ft. for the delayed period i.e. from 26.3.2017 to 14.5.2018 (13 months 20 days). On that basis the amount of compensation is calculated as $1675 \times 5 = \text{Rs. } 8375/-$ per month and Rs.1,14,458/- for the period of 13 months 20 days.

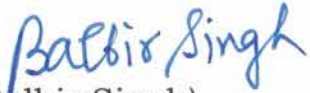
23. As discussed above, relief granted to the complainants in the shape of compensation on account of delay in delivery of possession of the flats in question, therefore, they are not entitled to any separate relief of compensation besides their entitlement as noticed above.

24. Accordingly, both the complaints stand partly accepted and the respondents are directed to pay the amount of Rs.1,14,458/- to the complainant of each complaint within sixty days from the date of this order failing which the respondents shall pay the interest on the said amount at the SBI highest marginal cost of lending rate (as on today) plus 2% from the date of this order till its realization. An attested copy of this order be



placed on the file of connected complaint titled Vijay Sharma Vs. M/s Gillco Developers and Builders Pvt. Ltd. A copy of this order be sent to both the parties free of costs under Rules and file be consigned to record room after due compliance.

Dated:29.10.2021


(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority