

**Before Sh. Balbir Singh, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot No.3,
Block-B, First Floor, Madhya Marg, Sector 18A,
Chandigarh-160018.**

Complaint No.RERA/AdC No.0088/2022
Date of Order: 30.04.2024

Gurnaib Singh Brar, resident of 1229, Sector 33-C,
Chandigarh.

.... Complainant

Versus

M/s Country Colonizers Pvt. Ltd. Sector 85, SAS Nagar,
Mohali.

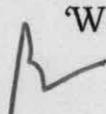
.....Respondent

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

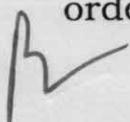
Present: Mr. Vipul Monga, Advocate, representative for the
complainant
Mr. Tejeshwar Singh, Advocate, representative for
the respondent

ORDER

The present complaint had been filed under
Section 31 of the Real Estate (Regulation and Development)
Act, 2016 (hereinafter referred to as “the Act”) seeking
compensation on account of mental pain and agony due to
delay in delivery of possession of unit in the project to the
complainant by respondent/builder. The gist of the
allegations, as contained in the complaint, are that the
complainant booked apartment no.1005, Tower Tulip, 10th
Floor, measuring 1700 sq. ft (super area) in the project
‘Wave Gardens’ being developed by the respondent M/s



Country Colonizers Pvt. Ltd. in Sector 85 and 89, SAS Nagar, Mohali; that agreement to sell was executed on 23.05.2013 for the said apartment for basic sale price of Rs.29,05,000/- and under the agreement, possession of the apartment was agreed to be handed over within 30 months with an extended period of 6 months, from the date of execution of the agreement; that subsequently, said agreement to sell was amended with the consent of the allottee and amended agreement was executed on 03.05.2016, under which the earlier allotted unit No.T-1005 was changed to Unit No.603 in the same tower on 6th floor having same super area and rest of the conditions remained unchanged, including the price of the unit i.e. 29,05,000/- including EDC charges; that as per clause 5.01 of the previous agreement dated 23.05.2013 the possession of the apartment was to be offered on or before 22.05.2016; that the respondent promoter however did not offer the possession by the said stipulated date and the project got delayed and thereupon the present complainant filed complaint No.GC/1856 of 2020 on 16.12.2020 for seeking relief of possession of the apartment, alongwith interest for the period of delay and litigation expenses. The said complaint inter parties, after contest was decided by the Regulating Authority vide order dated 29.09.2021 thereby directing the complainant to take possession of apartment within two months of the said order, after clearing all the pending dues against him, on the

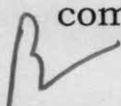


basis of valid offer of possession made by the respondent promoter on 02.02.2021 and the complainant was awarded statutory interest as per rules for the period of delay in making the valid offer of possession from 22.05.2016 till 02.02.2021 and the complainant was also directed to make the payment of statutory interest on the pending instalments and other charges, after adjustment of the interest to be paid by the respondent for the delayed period; that the complainant subsequently was handed over possession of the apartment on 26.08.2022 and the sale deed of the apartment was also executed in favour of the complainant. The complaint was accordingly filed for seeking compensation for delay in delivery of possession under Section 18 of the RERA Act alongwith litigation expenses.

2. Notice of the complaint was issued to the respondent and upon being served respondent put in appearance and filed written reply to contest the complaint by taking preliminary objections that the present complaint was barred qua the relief of litigation expenses, as the said relief was claimed in the previous complaint before the Authority, alongwith other reliefs, but was relinquished and therefore could not be claimed afresh in this complaint on the principle of constructive resjudicata; that the complaint had not been filed in good faith and with clean hands and attempts had been made to mislead the Bench; that the complaint was barred by limitation. On merits, the booking

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of the unit/apartment in the project of the case in hand of the respondent was admitted and the execution of the initial buyer's agreement, its terms and conditions and the amendment of the same by the agreement dated 03.05.2016 for changing the flat No. T-1005 to flat No.603 on the 6th floor of the same tower and keeping the rest of the terms and conditions same as per the previous agreement with the consent of the complainant was admitted. The further case was also admitted that offer of possession of the apartment in question by the stipulated date could not be made and the project got delayed and thereupon filing of the litigation by the complainant in the form of GC No.1856/2020 for seeking possession and delayed interest and litigation expenses was also admitted and so also its decision by the Regulating Authority vide order dated 29.09.2021, under which the offer of possession of the flat made by the respondent on 02.02.2021 was held to be a valid offer. It was then claimed that subsequently miscellaneous application was filed by the complainant in the shape of execution of the order passed by the Authority, under which the entire compliance of the order passed by the Authority dated 29.09.2021 had already been made and the possession of the flat had been handed over to the complainant on his making the payment of balance instalments and charges alongwith interest after adjustment of the statutory interest payable to the complainant for the delayed offer of possession. It was

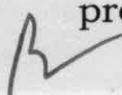
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agitated that as the relief of litigation expenses was claimed in the previous litigation but was given up by the complainant himself, the same could not be sought again in the present litigation. It was then averred that default was not only on the part of the respondent in delaying completion of the project and making valid offer of possession but the complainant also defaulted in making payment of instalments and other charges and therefore the Hon'ble Regulating Authority rightly awarded interest to the complainant for the delayed offer of possession; and that similarly, complainant was also directed to pay statutory interest alongwith pending instalments and other charges to the respondent. The further averment was that complainant had not made up his case for grant of compensation on any of the grounds provided under Section 72(a) to (d) of the RERA Act and therefore the complaint was liable to be dismissed.

3. The violations and contraventions as 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 inquiry.

4. I have heard the representatives for parties and have gone through the record on the file.

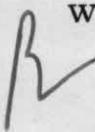
5. The basic objection raised on behalf of the promoter in the course of arguments, without touching the



merit of the case was that complainant despite the alleged lapse of the promoter in completion of the project within the stipulated period instead of choosing to withdraw from the project adopted to remain in the project and therefore the complainant was only entitled to interest as per rules of the RERA on the amount paid for the period of delay from the stipulated date of handing over the possession of the unit till delivery of possession and was not entitled to any compensation.

6. On the other hand, the argument on behalf of complainant was that the complainant had complied with the terms and conditions of the payment agreement by making the payments as per the schedule of payment and performed all his obligations, under the buyer's agreement, but the promoter failed to complete the project and hand over its possession and therefore the complainant was not only entitled to seek interest as per the rules for the delayed period, but also entitled to compensation under Section 18 of the RERA Act.

7. It is a matter of record that in the connected complaint inter parties for seeking the relief of possession of the unit, the Regulating Authority was pleased to direct the promoter to handover its possession and also to pay statutory interest as per RERA Rules on the paid amount with effect from 22.05.2016 till 02.02.2021, holding that

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there was delay about 5 years in making a valid offer of possession by the promoter.

8. The claim for compensation in the case in hand by the complainant was based on the premise that due to delay in delivery of possession the complainant was entitled to compensation. However, the requisite Section dealing with the controversy of the case in hand falls within the purview of Proviso to Section 18(1) of the RERA Act, which runs as under: -

"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) xxxx xxxx

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

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possession, at such rate as may be prescribed."

9. A close scrutiny of the aforesaid Section 18(1) of the RERA Act leaves no manner of doubt that Section 18(1) of the Act deals with the matters in which the project of the case in hand had not been completed by the promoter within the stipulated period as per terms and conditions of the RERA Act then the allottee had the option of withdrawing from the project and seek the relief of refund of the paid amount along with interest as per rules and also compensation. However, if the complainant chooses to remain in the project and wants to seek the relief of possession, then the only remedy provided for the default of the promoter in completion of the project is to get the delayed interest on the paid amount from the stipulated date of possession till the actual date of completion of the project as per proviso of Section 18(1) of the RERA Act, which runs as under: -

"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."

10. In the case in hand also because of the default of the promoter in completion of the project the complainant has chosen to seek the relief of possession and delayed interest which has already been allowed by the Regulating

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Authority as per order dated 29.09.2021. By operation of proviso of Section 18 of the RERA Act quoted in extenso above, the complainant is not entitled to relief of compensation because he has not opted to withdraw from the project and wants to remain in the project.

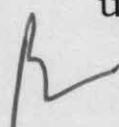
11. Faced with this eventuality, the further argument on behalf of the complainant was that case for compensation is also covered as per provision of Section 18(3) of the RERA Act because the promoter failed to discharge his obligation under the Act and the terms and conditions of the buyer's agreement.

12. The argument is, however, without merit inasmuch as Section 18(3) of the RERA Act runs as under:

"18. (1) xxxx xxxx

"18(2) xxxx xxxx

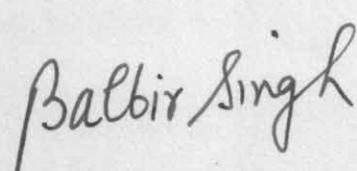
"18 (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided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

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13. A plain reading of Section 18(3) of the RERA Act indicates that it relates to other obligations which are not covered within the provisions of Sections 18(1) and 18(2) of the RERA Act. As has already been noticed, the default of the promoter in the case in hand i.e. delay in completion of the project is squarely covered within the proviso of Section 18(1) and therefore cannot be said to be covered within the provisions of Section 18(3) of the RERA Act. As has already been noticed, in the connected complaint inter parties before the Regulating Authority the complainant has already been granted the relief of direction to the promoter to handover the possession of the unit in the project in the case in hand and also interest on the paid amount with effect from 22.05.2016 till 02.02.2021. Therefore, the present complaint for seeking the relief of compensation for the default of the respondent in not completing the project within the stipulated time because of complainant opting to remain in the project and seek the relief of possession and delayed interest, is not maintainable.

14. As a result of the above discussion, present complaint filed by the complainant is dismissed being not maintainable. File be consigned to record room after necessary compliance under rules.

Dated:30.04.2024


(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority,