

**BEFORE SH.R.S.RAI, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No.AdC No.1068/2019

Dated of Institution:07.03.2019

Date of Order:29.08.2025

1. Anjana Anand

2. Vishal Anand, Both Residents of # H1-103, Maya Garden City, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code 140603.

....Complainants

Versus

M/s Barnala Builders And Property Consultants, Maya Garden City Zirakpur Ambala Highway, District Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140603.

.....Respondent

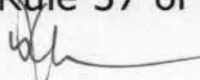
Complaint under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

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Present: Mr.Kulwinder Singh Advocate, for the complainants.
Mr. Amritpal Singh Sandhu Advocate, for the respondent.

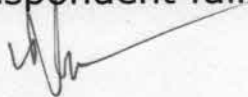
ORDER

Present complaint has been filed by the complainants, under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) read with Rule 37 of the Punjab State

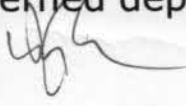


Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules) against the respondent, seeking compensation and litigation expenses etc.

2. Brief facts of the case are that complainants booked 5BHK flat for their own residence in the project of respondent no.1 vide application dated 08.12.2012 and the respondent issued allotment letter of flat no.103, measuring 2850 square feet in H1 block at first floor vide letter dated 14.12.2012 for the consideration of Rs.63,00,000/-, however, complainants paid the total amount of Rs.68,41,850/- including maintenance, service and late charges and no dues certificate dated 29.04.2016 was issued by respondent. That possession was to be delivered on or before 30.11.2014, but offer of the possession was given by respondent on 15.04.2016. That as per Agreement, total area of flat was 2850 square feet, however, the respondent delivered only 2050 square feet. So the respondent has usurped a sum of Rs.21,93,262/- towards the extra area of 797.55 square feet. Further, respondent took the hefty amount on the name of service tax, but he was unable to show the receipts. It is further averred that as per brochure and allurements, the respondent was liable to provide amenities like geysers, split ACs in all rooms, and Club housing facilities, anti skid tiles as per Agreement, 5KVA power back up etc. but the respondent failed to do so.

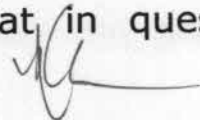


Even, no proper roads are available to approach to highway. That respondent has failed to get completion certificate from the competent authority and has mortgaged the land, meant for construction of the said flat, to the bank. It is also submitted that material used in construction is of very low quality. That complainants approached the respondent several times and also sent a legal notice to it on 23.03.2017 but all in vain. Further, it is averred that earlier case was filed before PLA and State Consumer Dispute Redressal Commission, Punjab but the same was withdrawn for want of jurisdiction. Lastly, complainants prayed for giving direction to respondent to pay compensation(s) as under:-

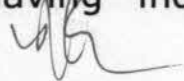
- a. To pay Rs.8,02,000/- as per valuation report to make the flat in question as promised.
 - b. To pay compensation of Rs.10,00,000/- for causing mental agony, harassment and humiliation.
 - c. To remove all the encroachments made by the respondent for making parking etc. and to put the same as per plan i.e. greenery/park.
 - d. To refund the amount received as service tax from the complainants, since the same was not deposited by the respondent, with the concerned department.
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- e. To refund the amount of Rs.21,93,262/ for providing 797.55 sq. ft. less area of the flat, than the agreed area i.e. 2850 square feet.
- f. To give NEC and get the sale deed executed as per RERA Act, with clear carpet area in favour of the complainants.
- g. To provide club/swimming pool etc. along with all facilities as per promise made in brochure.
- h. To provide all other facilities which were promised, but have not been provided i.e provision of DTH, Broadband, Intercom Facility, approach from Highway.
- i. To pay an amount of Rs.1,00,000/- as litigation expenses.

3. Upon notice, respondent, appeared and filed written reply by taking preliminary objections that the present complaint is barred by limitation and the same is liable to be dismissed. It is also submitted that the present complaint is not maintainable, as the housing project in question was complete and the competent authority had already granted partial completion certificate to the said Housing Project. In view of the provisions of sections 2(s) & (t) of the RERA Act and Rule 2(g) of the Rules, provisions of the Act are only applicable to the ongoing project i.e the project is under construction. The flat in question was

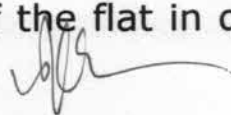


complete and occupied in April 2016. The flats in housing project in question, were sold before the commencement of the Act and the construction took place as per sanction granted by the concerned Planning Authority. In the present case, the project work has been completed and the buildings in the project have been occupied by the allottees since 2014-15. Thus, it cannot be treated as ongoing project under the provisions of the Act and as such, this Bench has no jurisdiction to entertain and decide this matter. Further, it is averred that the present complaint is not maintainable, because possession of the flat was taken by the complainants in June, 2016. At that time, the Act was not enforced in Punjab, so it is not application in the case of the complainants. Moreover, the Act has prospective effect and the same is not applicable in retrospective manner. That the proceedings commenced under RERA Act against the respondent are clear cut violation of the Article 20(1) of the Constitution of India. That prior to June 2016, the relationship between the parties to this case, was governed by the terms of their contract. Further, it is also averred that present complaint is not maintainable in the eyes of law, having not been filed in the proper form. In view of Proviso of Section 18(1) of the Act, Adjudicating Officer is not competent to entertain, try and decide the present complaint. That the complainants having indulged into

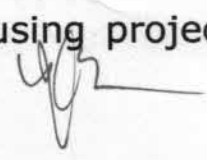


"Supresso Veri" and "Suggestio Falsi", have not approached the Adjudicating Officer with clean hands and have concealed the material facts from the Authority, so they are not entitled for any relief and the present complaint deserves to be dismissed on this ground alone. Further, it is submitted that the present complaint has been filed by the complainants with malafide intention and bad motive to get undue advantage against the respondent.

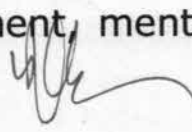
On merits, it is averred that flat in question was booked for Rs.78,37,500/- under Payment Plan "B", but later on, the cost of flat was re-fixed as Rs.63,00,000/-. In accordance with the said payment plan, complainants were required to make payment of flat alongwith taxes within 410 days from the date of booking of the flat. But they failed to adhere to the terms of payment plan and did not deposit the due amount in accordance to the payment plan. It is also admitted fact that complainants paid late payment charges, which clearly shows that they did not adhere to the terms of the payment plan. Further, it is averred that there is no extra ordinary delay in delivery of possession. That complainants themselves were not in a position to take possession of the flat on the date fixed, because of financial crises. As and when complainants cleared their dues, respondent handed over possession of the flat to them. Further, it is averred that super area of the flat in question,



is 2850 square feet in view of approved layout plan and its covered area is 2217.37 square feet and respondent has delivered the exact area to the complainants in accordance to the layout plan. There is no shortfall in the area of flat. Further, it is averred that service tax is government charges and nobody can use the same after collection of said tax. Whatsoever amount has been paid by the complainants in lieu of service tax, that has been deposited by the respondent with the concerned department of the Govt. Further, flat has been constructed as per the sanctioned specifications/layout plan. It is also submitted that respondent has provided each and every thing as mentioned in the allotment letter. The brochure was not a legal offering, rather it was a common document for all size of flats in different housing projects of the respondent. Further, it is averred that respondent has provided all the facilities with better quality of construction material. That respondent delivered the flat along with fitted geysers and ACs in all the rooms. That the power back up facility is very much available in the housing project and anyone can avail the same by depositing the requisite security amount with the respondent. Further, it is averred that housing project is very much connected to main highway by connecting road. The flat in question has been constructed as per promise made and as per latest trend. That housing project is fully

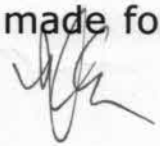


equipped with basic amenities and at present more than 1500 families are living happily therein. Further, it is submitted that the project is very much complete in all respects and the MC Zirakpur had also issued partial completion certificate dated 08.12.2016 & 12.03.2018 to the housing project in question. That respondent has not mortgaged any part of land of housing project with the bank. Further, the flat has been constructed as per the sanctioned specifications/layout plan by using high quality of material. There was no dampness in flat at the time of its delivery to the complainants. Complainants have presented false and concocted facts before this Bench to get undue advantage against the respondent. Further, it is averred that complainants visited office of the respondent, but did not raise any claim with regard to the present dispute. The respondent did not receive any legal notice dated 23.03.2017 from the complainants, so question to give its reply does not arise.

- a. That respondent is not liable to pay the amount of Rs.8,02,000/- in accordance to valuation report as same is false and fabricated document.
 - b. That respondent is also not liable to pay compensation of Rs.10,00,000/- to the complainants as he has not caused harassment, mental agony to the complainants.
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- c. That respondent is not liable to remove any encroachment on road as no part of the project has been encroached by the respondent.
- d. Further, the respondent is also not liable to refund the amount of service tax and the same has been deposited by the respondent, with concerned Government Department.
- e. Further, respondent is not liable to refund of Rs.21,93,262/- to the complainants as there is no shortfall of area of 797.55 square feet in the flat in dispute.
- f. Further, respondent has already given NOC to the complainants and executed the sale deed of flat in favour of complainants.
- g. Further, club house facility is very much available in the housing project and same can be enjoyed after paying the usage charges.
- h. That housing project is also well equipped with latest DTH Internet Facility and the project is also well connected to approach the road.
- i. That respondent is also not liable to pay litigation expenses of Rs.1,00,000/- to the complainants.

After denying the entire claim of the claimants and their allegations, a prayer has been made for dismissal of this complaint.



4. Rejoinder to the written reply was filed by the complainants controverting the pleadings of written reply of respondent and reiterating the contents of their complaint.

5. Violations and contraventions contained in the complaint were put to the representative for the respondent. He totally denied all of them, including allegations of the complainants. Thereafter, the complaint was proceeded for further enquiry.

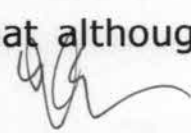
6. I have heard the representatives of the parties, who addressed the arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

Perusal of the record of the complaint shows that initially the present complaint was filed by the complainant, seeking refund on the ground of less area of the flat, amounts for not providing the promised facilities, interest, compensation including litigation expenses etc. Our Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 23021, titled as M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Others etc.** alongwith connected appeals, vide order dated 11.11.2021, while interpreting the various Sections, scope and scheme of the RERA Act, had held that the jurisdiction to dispose of cases pertaining to Refund of Amount and Interest on Refund Amount, Penalty



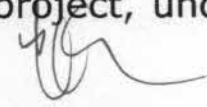
and Interest thereon etc., lies with the Regulatory Authority under the Act, whereas Adjudicating Officer has the only power to deal with the cases seeking relief of compensation and interest thereon, under Sections 12,14,18 & 19. Accordingly, the present case was segregated and one set of paper book of the present complaint was sent to the Hon'ble Authority for deciding the claim of refund, interest etc., whereas the present case was kept with this Bench for deciding the relief of compensation etc. The case sent to the Hon'ble Authority was disposed of vide order dated 07.06.2022, copy of which is available on the record of this complaint. Admittedly, facts of the cases i.e the case in hand and the case decided by the Hon'ble Authority, are the same and parties are also the same.

There is nothing on record to suggest that the said order dated 07.06.2022 has been challenged by any of the parties, so meaning thereby, it has become final and parties are bound by the findings of this order. It was held in the said order that the respondent had received PCC/OC with regard to the tower in question on 08.12.2016 and another PCC/OC was issued on 12.03.2018. That the complainants had taken possession prior to the commencement of the Act. It was specifically mentioned that the first PCC was granted on 08.02.2016, which is prior to the commencement of the Act i.e 01.05.2017. It was further held that although there



was delay in handing over the possession, yet the complainant took possession after clearing all pending dues, as well as payment of delay charges. The respondent had received the PCC/OC prior to handing over the possession. Thus, the offer and handing over of possession was valid. It was also held that the project was granted partial completion certificate on 08.12.2016 and 12.03.2018, which itself implies that all required facilities, as per the approved layout plan, had been completed and verified by the competent authority. So complaint of the present complainant, alongwith other complaints was dismissed by the Hon'ble Authority vide order dated 07.06.2022.

It is crystal clear from the order dated 07.06.2022 passed by the Hon'ble Authority that possession of the flat was delivered to the complainants in the month of April, 2016. This fact qua delivery of possession is not disputed by the complainants. So it is admitted case of the parties that possession was delivered to the complainants by respondent, much prior to the date of implementation of the Act, in Punjab i.e 01.05.2017. In view of the provisions of Section 2(s) & (t) of the Act and Rules 2 (g) & (h) of the Rules, provisions of the Act are only applicable to the ongoing project i.e the project under construction. Keeping in view all these facts and circumstances, project of the respondent cannot be termed as ongoing project, under the



Act. So provisions of the Act are not attracted in this case and remedy of the claimants with regard to their relief does not lie before this Bench. So this complaint deserves dismissal.

7. As a result of my above discussion, complaint of the complainants, stands dismissed and disposed of, with no order as to costs, on the ground that this Bench has no jurisdiction to decide the same. A copy of this order be sent to both the parties, free of cost, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:29.08.2025


(Rajinder Singh Rai)
Adjudicating Officer,
RERA, Punjab.