

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

Complaint ADC No.0247/2021

Dated of Institution: 28.10.2021

Date of Order: 30.07.2025

Ashwani Middha, Resident of House No.2105, Urban Estate, Jind, Haryana, Pin  
Code 1266102.

....Complainant

Versus

1. M/s Barnala Builders, Opp. MC Donalds, NH-22, Chd.Ambala Highway  
Zirakpur, Sahibzada Ajit Singh Nagar, (Mohali), Punjab, Pin Code 140603.
2. Satish Jindal, C/o Barnala Builders, Opp. MC Donalds NH-22, Chd.  
Ambala Highway Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab  
Pin Code 140603.
3. Deepak Aggarwal , C/o Barnala Builders, Opp. MC Donalds NH-22, Chd.  
Ambala Highway Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab  
Pin Code 140603

.....Respondents

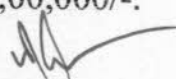
Complaint under Section 31 of the Real Estate (Regulation and  
Development) Act 2016.

Present: Mr.Mohit Uppal Advocate representative for the complainant.  
Mr. Amritpal Singh Sandhu, Advocate representative for the  
respondents.

### **ORDER**

The present complaint has been filed by complainant under  
Section 31 of the Real Estate (Regulation and Development) Act, 2016  
(hereinafter referred to as the Act) against the respondents, seeking  
compensation as under;

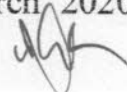
- a. Rs.18,628/- p.m from March, 2020 till realization alongwith 12%  
interest per annum from due date till realization.
- b. Rs.5,00,000/- for mental pain and agony and physical harassment.
- c. Litigation expenses to the tune of Rs.2,00,000/-.




d. Any other relief/direction may be passed

on account of delay in handing over possession of apartment in the project 'Maya Garden Magnesia.

2. Brief facts of the case are that on 18.10.2019, the respondents allured the complainant to buy a shop in their project i.e. 'Maya garden Magnesia'. It was projected that project shall be developed as single unit & assured that return @ 1% per month shall be paid till the completion of whole project. Complainant was shown one video clip of the project & no lay out plan & floor plan was provided to him and the total cost of the shop was Rs.20,00,000/- besides other charges of Rs.1,04,000/- to be paid at the time of offer of possession. Further, it is submitted that by relying upon the respondents, complainant booked shop no. 3096, measuring Shop Area 260 square feet, having carpet area of 140.666 square feet in their project. The respondents received an amount of Rs.19,74,621/- from the complainant before entering into agreement for sale and without issuance of any allotment letter. The complainant whenever demanded the agreement, he was told that it would be got prepared and he would be called to sign it. It is also averred that later on, after taking all the cheques of the aforesaid amount, he was given the agreement along-with some letters to sign on 09.11.2019. He after going through the contents of the agreement and the letters appended, brought into the notice of respondents some objectionable clauses and the letters which were required to be signed, and were not agreeable and acceptable to him and in this regard an e-mail dated 10.11.2019 as A-4 was also sent to respondents. The complainant had to sign agreement on 11.11.2019 i.e. A-5 due to dominant position of the respondents and no heed was paid to his grievances. Further, it is averred that after March 2020 onwards,

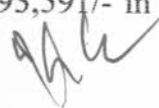


respondents stopped paying the assured return. Letter of Assured Return is A6 & letter dated 05.03.2020 as A-7 were sent by respondents for registration of the agreement for sale. Since he had already raised objections qua certain clauses in the agreement, therefore, there was no occasion with him to come until his grievances were redressed. Further, it is also averred that in lieu of assured return of March 2020, to May 2020 & Sep.2020 to December 2020, he was given credit notes as A-8, against which also objection was raised vide A-9. The complainant was issued two cheques of amount of Rs.16,766/- respectively, for the return of May 2021 & June 2021 and on the presentation of cheque for May 2021 to its banker, but the same could not be encashed as respondents had stopped the payment. Copies of the said cheques are as A-10 and legal notice of NI Act was given, but of no avail as A-11. The letter of offer of possession dated 21.06.2021 demanding Rs.2,65,759/- was received (A-12). It is further submitted that on 22.07.2021 & 28.09.2021, the project was visited by the complainant and he was shocked that there was no basic amenities like, drinking water, toilet were not ready, lifts were not operational & construction was going on. That construction was going on the IIIrd floor, where the Shop No. 3096 is located and project was not complete. The shop no.3096 was shown by the executives of the respondents. There is a duct containing pipes and pillar inside the shop, which reduced the area of shop, proper dimension was not provided and when completion and occupation certificate for whole project was asked, respondents failed to show. The respondents were pointed out about the no viability of the shop due to aforesaid constructions of duct and pillar and project was still incomplete. Further, it is submitted that vide correspondences detailed hereinafter e-mail 26.07.2021 & registered post



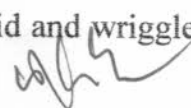
and reminder dated 11.08.2021 objections were raised, the copies of same are A-13 to A-16 (photographs). It is submitted that the complainant has been cheated by the act, omission, arbitrary and unilateral and illegal acts of the respondents. Vide e-mail dated 03.10.2021 and a letter containing the contents of e-mail Dated 03.10.2021 sent through registered post on 04.10.2021 (Copy of email, postal receipt & acknowledgment are A-17 & A-18), whereby he asked respondents to refund the entire amount along-with interest, but till date respondents have failed to refund the entire amount along-with interest. Hence, the present complaint.

3. Upon notice, respondents were served and appeared through authorized representative and filed written reply to contest the complaint by taking preliminary objections, that there is no cause of action in favour of the complainant and against the respondents. It is also submitted that the complainant is not only guilty of suppressing the material facts, but has willfully and with malafide intention, has filed the fallacious complaint with ulterior motive to earn unjust enrichment. Hence, the present complaint is liable to be dismissed. That the present complaint is also liable to be dismissed, on the ground of mis-joinder of the parties as the respondents No.2 & 3 are the Managing Partners of respondent No.1, who is promoter and builder with whom the complainant had executed the agreement to sell and as such, Satish Kumar and Deepak Aggarwal cannot be impleaded as party to the present complaint in order to have wrongful financial gains. That the complaint is liable to be dismissed, as the complainant has not approached this Bench with clean hands and has concealed material facts to mislead this Bench. That the complaint is liable to be dismissed with exemplary costs on the ground that the complainant has deliberately concealed the factum of availing benefits from the respondent, with respect to investment/returns as per the mutual understanding between the parties. The respondent has given benefits to the complainant over deposited amount equivalent to sum of Rs.2,93,591/- in the

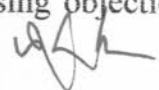




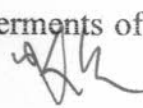
form of assured returns and credit notes and this fact has been concealed by the complainant. That the possession was offered to the complainant in a time bound manner, as per the provisions of the Act and specific terms and conditions of the Buyer's Agreement, after obtaining occupancy certificate from the competent authority and as such, the present complaint is devoid of any merit and is liable to be dismissed on this ground. In this regard, reliance has been placed upon the judgment of Hon'ble RERA Tribunal in case "**Rakesh Rastogi v. M/s Citi Centre Developers**", G.C No.1509 of 2019 and "**Maj. Deepak Chauhan and Anr. V. ATS Estates Pvt. Ltd.**", GC No.1425, wherein the Hon'ble Tribunal was pleased to hold that the claim for valid possession of the unit, is unfructuous as the possession of the unit has been held to be validly given after receipt of partial completion certificate. That the Hon'ble Tribunal vide its Circular Memo No.RERA/ENF-19 dated 09.07.2019 has clarified that occupancy certificate is issued for dwelling units falling with the portion for which partial completion certificate is issued after due field enquiry. That the respondents have obtained the occupancy certificate and issued the offer of possession without any delay, so the complainant is bound to take possession of the unit as per the provisions of the Act, as well as specific terms and conditions of the Buyer's Agreement and Section 19(1) of the Act has been specifically referred to this regard. Further, it is submitted that the complainant of the present case, has intentionally and deliberately violated the obligations and duties without any justification. That the complainant is the actual defaulter, as not only he failed to clear the pending dues, but also failed to pay the maintenance charges. The complainant has also failed to take possession of the unit without any fault of the part of the respondent and is liable to pay holding charges as well, as per the provisions of Clause 33 (j) of the Buyer's Agreement. Further, it is submitted that the complainant is not a genuine buyer and he merely entered into the agreement with the respondent to avail the returns/interest scheme from the investment perspective, and is deliberately trying to delay taking over the possession of the unit, in an attempt to avoid and wriggle



out of the obligations as per Clause 33 (1) of the Agreement. The present complaint is liable to be dismissed on the grounds of lack of proper mandatory format as prescribed under Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017. All the complaints before the AO, need to be mandatorily filed under FORM-N as per the prescribed format. That one of the essentials of FORM-M is verification of the contents of the complaint which needs to be filed and duly signed by the complainant, accordingly without verifying the contents of the complaint the same would be deemed as incomplete of the prescribed format. Therefore, the present complaint in the present form, is incomplete and cannot be proceeded further for adjudication and is liable to be dismissed. It is submitted that the Hon'ble RERA Authority in its various judgments has already held that there are no ground to implead directors or authorized signatories of the builder company in arrays of the parties to the complaint and accordingly, have dropped the proceedings against them in their personal capacity. It has been denied that respondent has ever enticed or allured the complainant in any manner to book a unit in the present project. Infact the complainant had approached the respondent to book a commercial unit for investment purposes, after due diligence being impressed by reputation of the respondent. A copy of letter by the complainant expressing their interest towards booking of a unit for assured returns is appended as Annexure R-4. It has further been denied that respondent has received any money towards the unit in contravention to the provisions of the Act. In the present case, the Buyer's Agreement was handed over to the complainant on 09.11.2019 and subsequently, without executing the agreement, the complainant transferred additional amount to the respondent and thereafter, intentionally and deliberately delayed the execution of the agreement without any justification or cause. It is further submitted that if the terms and conditions of the agreement were not acceptable to the complainant on any ground, he could have refused to sign and execute the Buyer's Agreement and could sought the refund of his money at the very time of raising objections



qua certain terms and conditions of the agreement. Agreement in the present case has been executed by the complainant, so he is now barred by the principle of estoppel. It is also denied that no assured return was paid till offer of possession to the complainant. It is submitted that credit notes equivalent to the amount of assured returns would be adjusted towards the final payment at the time of offer of possession against the balance consideration and amount of Rs,1,17,361/- has been duly adjusted towards the pending sale consideration. It has further been submitted that more than 500 allottees, have already taken possession of their respective units in their said project. The layout plans and floor plans were duly supplied and presented to the complainant and the same were accepted by the complainant without any objection. As such, the complainant is hereby barred by the principle of Estoppel to raise any claim against the structure or layout plan in question. It has further been denied that the unit in question is neither complete nor of habitable condition. The unit in question is entirely complete and partial completion-cum-occupancy certificate has already been obtained by the respondent, as per law. It is also denied that specifications, particulars and amenities have not been developed. In the instant case, the RERA Registration for the present project was valid upto September, 2022 and as such, any claim towards the common area facilities is premature and liable to be dismissed. It has been submitted that complaint seeking refund would not be maintainable, if the same has been filed after a valid offer of possession. Further, it is averred that complainant is liable to pay maintenance charges, holding charges, pending dues alongwith interest thereupon as per the existing provisions of law and as per the specific clauses of the agreement. It has further been denied that respondent has failed to fulfill any of its obligations as promised or assured or as obligatory under any rule of law. The complainant has also prayed for payment of assured returns over and above the refund, alongwith interest. At one side, the complainant has decided to opt out of the project and on the other hand, he also wants the payment of assured returns towards the unit in question. Remaining other averments of the



complaint have been denied being wrong and false. Lastly, a prayer has been made for dismissal of this complaint, as the complainant is not entitled to any relief.

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

5. 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.

Factum of booking of the shop and payment made by the complainant, as detailed in Para No.2 & 3 of this order is admitted. It is also admitted that the complainant had moved another complaint (GC No.0069 of 2023) before Hon'ble Authority (RERA Punjab) seeking refund of the amount alongwith interest, deposited by him, pertaining to the same shop. The said complaint has been dismissed by the Hon'ble Authority vide order dated 05.02.2025. Copy of this order is placed on record consisting of 22 pages, and no party raised any objection in placing on record copy of this order. The case in hand has been filed seeking the relief of compensation etc., on the main ground of delay in handing over possession of the shop in dispute. On the other hand, it is specific case of the respondents that they had offered possession of the said shop well within the prescribed time.

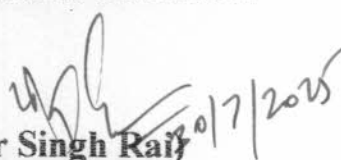
Perusal of the record of the case in hand, coupled with Paras No.18 to 22 of the order dated 05.02.2025 passed by the Hon'ble Authority, make it crystal clear that possession of the shop was offered by the respondents well within the settled time, between the parties. As per agreement to sell dated 11.11.2019, date of possession was September, 2022. It is further mentioned in the said order that respondents had offered possession to the complainant after obtaining the PCC/OC, vide their letter dated 21.06.2021 and that date is prior to the date of September, 2022, for handing over the possession, as per agreement to



sell. It was further held that the respondents had offered valid possession of the shop within the period settled between the parties, after obtaining the PCC/OC. It was specifically mentioned in the said order that respondents had obtained PCC/OC from the Municipal Council, Zirakpur i.e competent authority on 07.06.2021 and thereafter offered possession to the complainant on 20.06.2021 i.e much prior to September, 2022. So the complainant in the said case could not prove the delay in possession of the shop in dispute, so his relief of refund alongwith interest, was declined. Said order has become final, as there is nothing on record of the case in hand, to show that the same has been challenged before the Hon'ble Appellate Authority. Similar is the position in the case in hand, as facts and documents of both the cases are same and parties are also same. So in the case in hand, complainant also deserves no relief as he has failed to prove on record that there was delay on the part of the respondents for handing over possession of the shop in dispute to him, as per terms and conditions of the agreement to sell, executed between the parties.

6. As a result of my above discussion, present complaint filed by the complainant Ashwani Middha stands dismissed and disposed of being devoid of any merit. A copy of this order be sent to both the parties, free cost, under rules. File be consigned to the record room, after necessary compliance under rules.

**Dated; 30.07.2025**

  
**(Rajinder Singh Rai)**  
**Adjudicating Officer,**  
**Real Estate Regulatory Authority,**  
**Punjab.**