

**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.0262 OF 2021

Date of Institution:22.11.2021

Date of Decision:10.11.2025

Subinay Bedi, Resident of Wt05/601, Experion Windchants,
Sector 112, New Palam Vihar, District Gurgaon, Haryana Pin
Code 122017.

.....Complainant

Versus

Greater Mohali Area Development Authority, PUDA BHAWAN,
Sector 62, District Sahibzada Ajit Singh Nagar (Mohali),
Punjab Pin Code 160062.

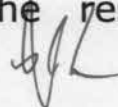
.....Respondent

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

Present: Mr. Akshat Mittal Advocate, for the complainant.
Mr. Bhupinder Singh Advocate with Mr. Balwinder
Singh Advocate, for the respondent.

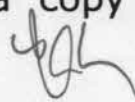
ORDER

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") read with Rule 37 of the Punjab State Real Estate
(Regulation and Development) Rules 2017, (hereinafter
called as the Rules) against the respondent/promoter

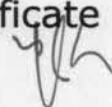


seeking compensation of Rs.10 lacson account of willful violation of contract, failure to discharge contractual obligation and on account of delay in handing over possession of apartment in the project 'Purab Premium Apartments in General Category, Sector-88, SAS Nagar, Mohali'.


2. Brief facts of this complaint are that complainant had booked a residential Apartment, Type 3 in the Purab Premium Apartments in General category at Sector-88, SAS Nagar Mohali in May 2012 i.e Flat No.1202, Block A6, 12th Floor-b, total area of 2911 sq. feet (incl. 690 square feet for 2 car parking). A letter of Intent (LOI) Ref No GMADA-EO/2012/2705 dated 23.05.2012 was issued to the complainant and a perusal of clause 3 (ii) of the said LOI shows that possession of the unit was to be delivered within 36 months from date of the issuance of LOI i.e. by 22.05.2015. Though the respondent/promoter was under obligation to deliver the legal possession of the unit by May 2015, but the same has not been delivered till date. Further, it is averred that more than 6.5 years have lapsed after the scheduled date of possession, but there is absolutely no signs of handing over possession of the Unit/Flat to the complainant. It is also submitted that complainant till date, has paid Rs.75,27,900/- (Seventy Five Lakhs Twenty Seven Thousand and Nine Hundred) and a copy of the ledger



received from respondent-promoter is enclosed with the complaint. It is also pertinent to mention here that more than 95% of the cost has been paid, as per the provisions of the LOI on or before the due dates. That balance of payment was to be made at the time of taking legal possession with OC/CC. Further, it is averred that over the years 2015-2018, complainant has been in regular telephonic contact with the respondent & has visited their office multiple times, desperately trying to know the timeline for legal possession with OC/CC. It is also submitted that finally in November, 2018, during one of such visits to promoter's office, complainant was verbally told to take possession of the unit. However, the complainant inspected his unit and was shocked to discover the following shortcomings after a thorough due diligence:-

- a) The Quality of construction was poor and there was nothing premium, although the Applicants were charged for a premium construction.
 - b) Car parkings were not ready.
 - c) Change in Project layouts like an increase in super area and reduction in carpet area, was without any proportionate reduction in cost etc.
 - d) The Flats were in semi finished state & the applicants were told to take the possession 'on fit out' or 'as is where is basis' without any Occupancy Certificate (OC)/Completion
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Certificate (CC). Further, it is averred that possession of incomplete unit without a proper occupancy certificate /completion certificate on 'on fit out' or 'as is where is basis' was not acceptable to the complainant. As no satisfactory response, was forthcoming, so complainant made a detailed representation on 24.12.2018 to the respondent for redressal of his grievances. It is further submitted that the complainant also filed an RTI Application on 25.12.2018 requesting the respondent inter alia to provide a copy of the Occupancy Certificate/Completion Certificate, being a pre-condition for possession as required under Section 17 (2) and Section 19 (10) of the Act. The RTI reply received from the respondent was evasive and did not enclose a copy of the Occupancy Certificate/Completion Certificate. It is also averred that the complainant outrightly rejected the respondent's offer and vide many e-mails from 2019-2021, communicated his intent not to take possession of an incomplete project without a valid OC and that too with delay of many years. It is submitted that the complainant demanded full refund with interest in line with section 18 (1) and 19 (4) of the RERA Act. The said mail communications w.e.f 2019-2021 from the complainant to respondent are enclosed, but the respondent has not responded to any of them, demanding to opt out of project as per Act. Hence, the present Complaint.



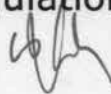
3. Upon notice, respondent put in appearance and contested the complaint by taking preliminary objections that Section 43 of the Act, empowered the Authority to frame schemes for development of land owned by it or transferred to it by the State Government and disposal of the said land with or without development on the terms and conditions by the Authority. In view of above provision of the Act, Greater Mohali Area Development Authority framed a scheme for allotment of apartments namely, Premium Apartments in Sector 88 SAS Nagar (Mohali). The terms and conditions for allotment of apartments in the above said scheme were detailed in the brochure, issued for information of the general public and particularly for prospective buyers of these apartments. Further, it is averred that the present complainant with his open eyes and after going through the terms and conditions of allotment contained in the brochure, applied for an apartment in Purab Premium Apartment Type-3 in Form No.PUR000196 and deposited 10% amount of the price of the apartment alongwith the application in the above said scheme application dated 11.01.2012. Thereafter, as the complainant was successful in the draw of lots held on 20.03.2012 of Purab Premium Apartment, Sector 88, Mohali, so letter of intent for allotment of residential apartment Type-3 was issued to him on 23.05.2012, subject to certain terms and conditions of



allotment. The tentative price of the apartment as mentioned in the Letter of Intent was Rs.69,00,000/-. Further, it is submitted that as per schedule payment of Rs.13,80,000/- being 20% of the price of the apartment was to be made by 22.06.2012, which the complainant had made on 21.06.2012. For balance payment of 65%, options were given either to pay the said amount in lumpsum within 60 days of the issuance of letter of intent with a rebate of 5% on the balance amount payable or with 12% interest in 6 half yearly installments from the date of issuance of letter of intent, as per schedule given under head note 'Plan-B' of condition number 2.2. The respondent further submitted that as per condition number 2.3. (ii) of the Letter of Intent, possession was to be delivered on clearance of all dues. It is further submitted that condition No.3 of the Letter of Intent deals with the ownership and possession. It is also averred that as per condition No.5 of the allotment letter, the complainant was required to take over possession of the apartment within a period of 30 days of issuance of the allotment letter. Further, it is also submitted that Letter of Allotment dated 30.06.2016 had been sent to the complainant as per his given address, which was returned undelivered by the postal authorities. Thereafter, the said letter of allotment had been again sent on the same address, which was also returned by the postal authorities



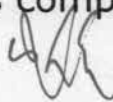
as undelivered. Apart from this, the respondent gave a public notice in various Newspapers for information of the allottees to take over possession of the apartments. The respondent has also submitted that as per condition 5 of Letter of Intent dated 23.05.2012, any change in the address must be immediately intimated to the Estate Officer by registered post. However, the complainant had never intimated to the respondent about his change of address, if any, in the manner mentioned in the Letter of Intent. Further, respondent averred that the complainant himself failed to take possession as per allotment letter dated 30.06.2016 and is not entitled to claim whatsoever as per condition No.5 of the allotment letter dated 30.06.2012. As regards the offer of possession without occupation certificate, it was submitted that there is no condition in the brochure of the scheme, letter of intent and provisions of Punjab Regional and Town Planning and Development Act, 1995, which governs the allotment in question to have an occupation certificate prior to offer of possession of the apartment. The only condition 3(ii), vide which possession is to be handed over after completion of development works at site which had been completed prior to offer of possession vide letter dated 30.06.2016. Further, it is submitted that provisions of occupation certificate, completion certificate enshrined in the Real Estate Regulation and Development)



Act, 2016 are applicable from the date of coming into operation of the relevant provisions of the said Act i.e

01.05.2017. In the present case, possession of the flat had been offered to the complainant on 30.06.2016 much prior to coming to operation of the relevant provisions of the Act. The claim sought by the complainant qua the apartment in question alongwith interest and compensation, which is not admissible as per agreed terms and conditions of allotment. As per condition No.5 of the allotment letter dated 30.06.2016, the allottee shall not be entitled to claim any rebate or refund on any ground whatsoever. Moreover, the allotment was made under the provisions of Punjab Regional and Town Planning and Development Act, 1995, so the complainant is not entitled to relief claimed in the present complaint. The allegations of complainant qua quality of construction, car parking, change in lay out plan, semi furnished state or fit out etc. are denied without any evidence. In fact, number of allottees had already taken over the possession of the apartments and are residing there. There is no condition in the allotment letter to obtain CC or OC prior to handing over possession of the apartment. Only condition is that development works should be completed, which are complete as per report of the field staff. Otherwise also, the project is developed by the GMADA

PAPRA, 1995 under which CC/OC is to be obtained. Since the possession of the apartment had been offered to the complainant, but he failed to take over the possession for the reasons best known to him. It is also submitted that the complainant got the apartment allotted for investment purposes and due to slow down in the real estate market, he took u-turn and started writing such letters on one pretext of the other. Sections 17(2) and 19(10) of the Act are not applicable to the facts and circumstances of this case, as the possession had already been offered to the complainant on 30.06.2016 prior to coming into operation of the Act. The letter of intent has been issued to the complainant on 23.05.2012 and allotment letter on 30.06.2016 and possession of the apartment has been offered to the complainant on 30.06.2016 i.e prior to coming into operation of the relevant provisions of the Act. Thus, the present complaint is not maintainable before the Adjudicating Officer and is liable to be dismissed on this score. The respondent has further submitted that as per Section 174 of the Punjab Regional and Town Planning and Development Act, 1995, order passed by the State Government or Competent Authority is final and is not to be questioned in any legal proceedings. Denying rest of the averments of the complaint for want of knowledge, a prayer has been made for dismissal of this complaint.

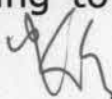


4. Complainant filed rejoinder rebutting the contentions of written reply of the respondent and reiterating the contents of his complaint.

5. Violations and contraventions contained in the complaint, were put to the representative of the respondent, to which he denied and did not accept the allegations. Thereafter, the complaint was fixed for further enquiry.

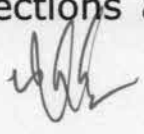
6. I have heard the authorized representatives of the parties and have gone through the record of this case carefully, with their able assistance. Each party has argued its case on the lines of its pleadings, as detailed in the earlier part of this order.

Admittedly Flat No.1202 with the total area of 2911 square feet, was allotted to the complainant in the project of the respondent, as detailed in Para No.2 of this order. Letter of intent in this regard was issued to the complainant and possession of the said plot/unit was to be delivered within 36 months from the date of issuance of LOI. The price of said flat has also not been disputed and payments made by the complainant have also been admitted. Main plea of the complainant is that possession of the flat was not given to him even after a delay of more than 6.5 years from the due date and that the respondent has violated the terms and conditions of the contract effected between the parties pertaining to purchase of the



said flat. So he has sought compensation from the respondent, as per section 18 of the Act, as detailed in Para No.1 of this order. On the other hand, it is stand of the respondent that the complainant has been allowed refund amount alongwith interest by the Hon'ble Authority (RERA) vide order dated 29.11.2023, so now complainant deserves no relief from this Bench, through this complaint. It is specific case of the respondent that since offer of possession of the flat was given to the complainant on 30.06.2016 i.e prior to the implementation of the Act 2016, so provisions of the said Act are not applicable to the case in hand. That no violation has been made by the respondent and as per report of the staff, all the amenities have been provided to the allottees of the said project. Denying whole claim of the complainant, a prayer has been made for dismissal of this complaint.

7. I have paid a considerable thought to the submissions of both the parties and have perused their pleadings, documents. I have also perused the order dated 29.11.2023 passed by the Hon'ble Authority (RERA) vide which refund alongwith interest has been allowed to the complainant pertaining to the flat in question. For the proper disposal of the present case, perusal of Sections 18 & 72 of the Act is required. Both these Sections are reproduced 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

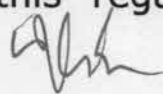
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

72. Factors to be taken into account by the adjudicating officer: while adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default:
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.


Order dated 29.11.2023 passed by the Hon'ble Authority (RERA) pertaining to the present case, vide which complainant has been allowed refund amount alongwith interest, is available on the record of this case. This order has not been set aside by any competent authority, so it has become final and it is binding upon both the parties. It is specifically held by the Hon'ble Authority in the said order that provisions of the Act, 2016 are applicable in the case in hand, as offer of possession dated 30.06.2016 was not valid, given by the respondent. Keeping in view the findings of the Hon'ble Authority contained in this order, there is delay of about 7 years in delivering possession to the complainant. Accepting plea of the complainant to be true and correct, the said application of the complainant was allowed by the Hon'ble Authority vide order dated 29.11.2023. Meaning thereby, the complainant has withdrawn from the project. So apart from relief of refund with interest, he is also entitled for compensation as per Section 18(1) of the Act. While granting compensation, this Bench has to consider the factors as mentioned in Section 72 of the Act.

Section 72 has given scope of considering other factors, which are considered necessary in furtherance of justice. Since the complainant has not been able to get possession of the unit in question, we have to consider psyche of the Indian Society, in this regard. Normally,



Indians are emotionally attached to own a property. They are prepared to spend major share of their life time earning and also ready to obtain loans from the financial institutions in the hope of getting property. Since the complainant, without his fault, has not been able to get possession of the flat in question for a long time of about 7 years and had to seek the remedy under existing law and for that has to suffer harassment, mental agony and has to incur expenses to initiate this litigation for claiming his right, so certainly he is entitled for reasonable compensation and litigation expenses. Since he has withdrawn from the project and has been allowed refund amount alongwith interest, so he deserves no relief on the ground of lack of amenities provided by the respondent.

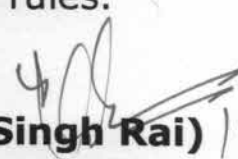
Keeping in view the entire facts and circumstances narrated above and taking into account the amount paid by the complainant, with regard to the purchase of the flat in dispute and the duration for which the possession has been delayed, an amount of Rs.1,50,000/- is assessed as compensation in lump sum by approximation. Apart from this, the complainant had to pursue this litigation by engaging the advocate, and spending considerable time from his busy schedule, for attending the proceedings of this case, so he is also entitled for litigation expenses to the tune



of Rs.30,000/-. Accordingly, this application deserves to be allowed partly, upto that extent.

8 As a result of my above discussion, this complaint stands partly allowed and disposed of. Complainant is held entitled to recover the total compensation to the tune of Rs.1,80,000/- (Rs.1,50,000/- + Rs.30,000/-) from the respondent. Accordingly, respondent is directed to pay the amount of compensation to the complainant within 90 days from the date of this order. Copy of this order be sent to the parties, free of cost, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:10.11.2025


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

10/11/2025