

**Before Sh. Ajay Pal Singh, Member,
The Real Estate Regulatory Authority, Punjab, at
Chandigarh.**

Complaint No.GC0602 of 2022
Dated of Decision: 03.08.2023

1. Lt. Col Vijay Singh Sandhu (Retd)
2. Rajbir Kaur Sandhu,
3. Karan Singh Sandhu,
All residents of House No.1113, Sector 36C, Chandigarh, Pin Code 160036.

.....Complainants

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt Ltd, India Trade Tower, First Floor, Madhya Marg Extension Road, Omaxe New Chandigarh, Mullanpur, District Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140901.
2. PNB Housing Finance limited, SCO 323-324, First Floor, Sector 35B, Chandigarh.

.....Respondents

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


Present Sh. Karan Singh Sandhu, Advocate, for the complainants
 Sh. Arjun Sharma, Advocate, for respondent No.1
 ~~Ms.~~ Anjali Sheoran, Advocate, for respondent No.2

ORDER

1. This complaint was filed under Section 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter called as the Act), read with Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules), before the Authority on 27.12.2022. The brief gist of the allegations is that the complainants booked one residential flat No.TLC/Emerald-A/Ground/1 in the project namely "The Lake", at Omaxe New Chandigarh at a total price of Rs.1,45,12,433/-, out of which the complainant paid an amount of Rs.1,26,51,629/-; which included home loan obtained from the Punjab National Housing Finance Ltd amounting to Rs.92,00,780/-. It is further the case of the complainant that, as per clause 40 of the allotment letter dated 04.09.2015, possession of the flat was to be

delivered upto 03.03.2019. However, the respondent No.1 has failed to deliver the possession, as a result the complainants have been compelled to live in a leased accommodation; and have paid an amount of Rs.34,50,188/- as rent since March 2019. In spite of making several oral as well as written requests the respondent No.1 has failed to deliver the possession of the flat in question to the complainants. Hence, this complaint for directing the respondent No.1 to hand over the possession of the flat in question at the earliest, after obtaining the completion certificate. It was further prayed that, respondent NO.1 may also be directed to pay interest for delayed possession.

2. Upon notice, respondent No.1 filed reply dated 03.05.2023. The main averments in the reply are as follows:-



i. That there is no delay in delivery of possession as the possession was to be delivered within 42 months from the signing of the allotment letter and said period was to be computed by excluding Sundays, bank holidays, enforced government holidays and days of cessation of work at site in compliance of order of any judicial/concerned state legislative body. As such, it cannot be claimed by the complainants that there is delay in giving possession.

ii. That in addition to that, the Government of India, on account of outbreak of COVID-19, issued an advisory dated 13.05.2020 by invoking the provision of force majeure under the Act and this Authority vide circular dated 28.10.2020, extended the six months period

for all statutory compliances, which had become due between 15th March 2020 and 15th September, 2020, which was extendable upto 3 more months. In this manner, the possession, as per the allotment letter, was to be delivered by 23rd March, 2020, which stood extended by nine months more.

- iii. That further the possession in terms of clause 40(a) was subject to timely payments of instalments by the complainants, which they failed to pay and as such, they are not entitled to the relief now being claimed by them.
- iv. That the complainants had booked the unit in question under the subvention scheme and the respondent No.1 had agreed to bear interest on disbursement amount by the bank till initiation of offer of possession. Accordingly, till March 2023, the respondent No.1 paid a sum of Rs.60,83,030/- to the bank as subvention interest amount and as such the time was never the essence of the agreement executed between the parties.

3. Reply dated 02.05.2023, has also been filed on behalf of respondent No.2. It is averred in the reply that the complainants have not claimed any relief against the answering respondent and as such the complaint is not maintainable against it. It is further submitted that the complainants had booked a residential flat by paying 33% value of the same and approached the answering respondent for the remaining 67% of the sale amount. The answering respondent sanctioned a housing loan of Rs.1,00,00,000/-, vide loan sanction letter dated 03.09.2015, for a period of 120 months. The answering

respondent also sanctioned another housing loan of Rs.1,73,272/- to the complainants on 10.09.2015 for a period of 120 months. It is further submitted that, as per the documents executed by the complainants, an amount of Rs.92,00,780/- was disbursed and the loan account is active as on date.

4. In the replication, the complainants reiterated the averments as contained in the complaint and denied those of the reply filed by respondent No.1.
5. I have examined the facts of the matter and the oral and written arguments of both the parties. The admitted facts in this case are that the complainants booked one residential flat No.TLC/Emerald-A/Ground/1 in the project "The Lake", at Omaxe New Chandigarh, for a total price of Rs.1,45,12,433/-. It is also not disputed that, out of above said amount, the complainants paid an amount of Rs.1,26,51,629/-; which consisted of Rs.92,00,780/- as home loan obtained from the Punjab National Housing Finance Ltd. It is further the case of the complainant that, as per clause 40 of the allotment letter, possession of the flat was to be delivered upto 03.03.2019. It is also a fact that no offer of possession has been made in this case.
6. At the outset, it is important to deal with the averments made by the respondent in his reply. The first averment is that, as per the provisions of Clause 40(a) of the allotment letter, holidays and weekends should be excluded while calculating the period of 48 months for handing over possession of the apartment to the complainant. In this regard the respondent has relied upon the decision of State Consumer Disputes Redressal Commission, Punjab, delivered in Consumer Complaint No.521 of 2019, wherein the said Commission has given

allowance to the respondent in another matter for Sundays and bank holidays. With due regard to the decision of the State Consumer Disputes Redressal Commission, Punjab, we are not inclined to give allowance for Sundays and bank holidays as per the provisions of Clause 40(a) of the allotment letter on the ground that the said clause is one side and against the interest of the allottee. This is so, as in the allotment letter no such benefit has been allowed to the allottee while making payments of installments under the construction linked plan. In Clause 35 of the allotment letter, the allottee is under an obligation to pay the installments on demand failing which the company would charge penal interest at the rate of 18% / 24% per annum for the period of delay: There is no clause in the said allotment letter for providing concession to the allottee on account of Sundays and bank holidays. The agreement allows the promoter to extend his obligation by a considerable period of time, while denying the same facility to the allottee. Hence, this is clearly a one side agreement and therefore, the clause for allowing extension on account of holidays and Sundays needs to be ignored. This would be in consonance with the ratio of the decision of the Supreme Court delivered in ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil appeal No.12238 of 2018.*** It appears that this order of the Supreme Court was not brought to the notice of the Consumer Commission while deciding complaint No 521 of 2019.

7. The next submission is with regard to the grace period of six months on account of COVID-19 by the Government and also by this Authority vide circular dated 28.10.2020. I have gone through the above stated circulars of this Authority as well as that of the Government of India. The circulars are with regard to the

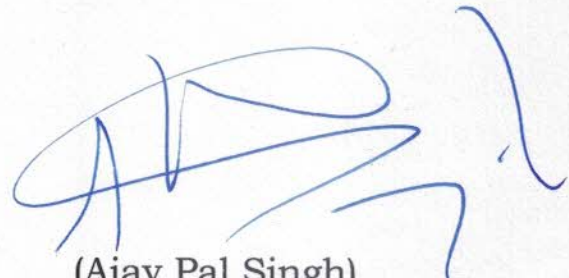
extension of time under Section 6 of the Act, for completion of the project, and has nothing to do with the date of possession stipulated in the allotment letter, as per Section 18(1) of the Act. Moreover, after allowing grace period of six months, the due date for possession comes to 03.09.2019, which is much prior to the period stipulated in the above stated two circulars. Further, even if, the period of Sundays and holidays, being claimed by the respondent is added in the 48 months, which comes to 54 months and 20 days, even then, the period for giving possession would have lapsed on 23.03.2020. The fact remains that possession has not yet been delivered to the complainant. Even otherwise I find that the calculations of holidays and Sundays, given by the respondent No.1 in their reply, is based upon estimates. In the circumstances, the prayer for allowing an extended period on account of holidays is without merit.

8. Keeping in view the above discussions, I am of the view that the possession of the flat was to be given to the complainant within 42 months of signing of the allotment letter; i.e. by 03.03.2019
9. Till date, the respondent has neither completed the apartment nor obtained any occupancy certificate/partial completion certificate. In the circumstances, default on the part of the respondent No.1 in not delivering possession of the flat in question, falls within the ambit of Section 18(1) of the Act and as such, the complainants are entitled to relief of interest for delayed possession under Section 16 of the Rules.
10. In view of above discussions, the respondent No.1 is directed as under:-

- i. As provided under Section 18(1) of the Act read with Rule 16 of the Rules, the respondent shall pay interest as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2%, w.e.f. 03.03.2019 till the date of delivery of legal and valid possession on the amount Rs.34,50,849/-, paid by the complainants from their own pocket.
- ii. The amount paid by the respondent No.1 i.e. Rs.60,83,030/- on account of interest to respondent No.2, PNB Housing Finance Limited, shall be set off against the interest to be paid to the complainants by respondent No.1 under Section 18 of the Act.
- iii. That the complainants would be bound to pay any outstanding amounts as per the allotment letter before taking possession of the unit in question. The interest to be paid by the complainants for any delay in payment would also be the State Bank of India's highest marginal cost of lending rate (as on today) plus 2%.

11. In the result, the complaint is accordingly disposed of as partly allowed. File be consigned to record room and copy of the order be provided to both the parties free of costs.

Dated:03.08.2023



(Ajay Pal Singh)
Member