



Real Estate Regulatory Authority, Punjab
First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018
Before the Bench of Sh. Rakesh Kumar Goyal, Member.

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| 1. Complaint No. | :- | AdC No. 12192019TR-AUTH02402022 |
| 2. Name & Address of the complainant (s)/ Allottee | :- | Sh. Praveen Gangwani
r/o B-90, Jal Vayu Vihar, Sector 30,
Gurgaon, Haryana |
| 3. Name & Address of the respondent (s)/ Promoter | :- | 1. Army Welfare Housing Organization,
South Hutments, Kashmir House, Rajaji
Marg, New Delhi, Delhi.

2. Project Director, AWHO, AWHO
Complex, Sector 114, SAS Nagar
(Mohali), Punjab. |
| 4. Date of filing of complaint | :- | 18.05.2019 |
| 5. Name of the Project and Address | :- | ‘Harbhajan Vihar’ Sector 114, Mohali |
| 6. RERA Registration No. of Project | :- | PBRERA-SAS81-PR0157 |
| 7. Name of Counsel for the complainant, if any. | :- | Sh. Balwinder Singh and Sh. Bhupinder
Singh, Advocate. |
| 8. Name of Counsel for the respondent, if any. | :- | Sh. Gurpreet Singh, Advocate. |
| 9. Section and Rules under which order is passed | :- | Section 31 of the RERD Act, 2016 r.w. Rule
36 of Pb. State RERD Rules, 2017. |
| 10. Date of Order | :- | 10.07.2023 |

Order u/s. 31 of Real Estate (Regulation & Development) Act, 2016 read with Rule 36 of Punjab State Real Estate (Regulation & Development) Rules, 2017.

This order is pursuant to the order of the Hon'ble Real Estate Appellate Tribunal, Punjab at Chandigarh dated 07.07.2022 in Appeal No. 264 of 2020 vide which, the order passed by the Adjudicating Officer dated 08.10.2020, *was disposed of with liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the Adjudicating Officer. The matter was remanded back thereof.* Subsequently, on 08.12.2022 on the basis of order passed by Hon'ble Apex Court in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021** and order of Hon'ble Real Estate Appellate Tribunal, Punjab at Chandigarh dated 07.07.2022 in Appeal No. 265 of 2020 in the case of **Ld. Col (retd.) Praveen Gangwani Vs. Army Welfare Housing Organization** the relief *qua* refund and interest have been transferred to the Bench of the Authority.

The complainant had applied for a dwelling unit in respondent's project namely Harbhajan Vihar, Sector 114, Mohali. The facts of the complaint are as follows:-



- a) On 15th October, 2010 booking letter for the dwelling unit, a Super Deluxe Apartment, was handed over to the complainant. That tentative cost of the dwelling unit at the time of booking was estimated to be Rs.40,85,000/- and tentative project completion date was promised to be three years from the date of booking i.e. upto 15.10.2013.
- b) Thereafter, tentative cost of the dwelling unit escalated to be Rs.52,40,000/- vide letter dated 09.06.2011 by the respondents and the probable date for completion and handing over of the dwelling unit was expected to be March 2014.
- c) The complainant took a loan of Rs.37,00,000/- from SBI in August 2011 and by June 2014 an amount of Rs 50,53,385/- was paid by the complainant (99% of the sale consideration).
- d) A Dwelling Unit F-0601, Super Deluxe Apartment in F Block, 6th Floor and Parking Spaces (Twin Car Parking Space in Basement) was allotted to the complainant on 27.06.2016.
- e) Subsequently, on 01.06.2018 a letter was issued by the respondent, escalating the cost of the dwelling unit by almost 50% to Rs.61,39,125/- from the initial estimate of Rs.40,85,000/-. Perusal of the same revealed that respondents were charging interest of Rs.1,05,984.00 on the delayed payment from him whereas more than 99% of sale consideration of the unit was already paid by 20.06.2014 against 95% of the cost, which was required to be paid by 30 Jun 2014.
- f) In order to take possession of his flat at the earliest without any frustrations, on 25.09.2018, the complainant paid an amount of Rs.10,85,740/- under protest.
- g) On 28.09.2018, all requisite documents (including affidavits, undertakings, etc) for handing over/taking over of the dwelling unit were submitted by the complainant and on 01.10.2018, clearance certificate for handing over of dwelling unit to the complainant was issued by the respondents.
- h) On 22.10.2018, complainant went to take possession of the dwelling unit but observed that the dwelling unit was still incomplete. On further inquiry it came to the knowledge of the complainant that the Completion Certificate/Occupancy Certificate was also not available with the respondents.
- i) On 01.11.2018, the complainant shared these facts with respondent no.2 and requested to get it rectified and a copy of the same was also sent by e-mail to the respondent no.1 (Annexure C-5). Subsequently, he kept on following with the respondents regarding the status as regard rectifications and completion of the unit. He also kept following regarding the availability of Completion Certificate/ Occupancy Certificate. He later on stated to withdraw from the project vide email dated 28.04.2019. Hence, the present complaint.



The complainant asked for the following reliefs:-

- a) Refund the amount alongwith interest paid by the complainant.
- b) Imposition of penalty for the contravention of the Act and the Rules made thereunder.

4. In response to the notice, the respondents filed their reply and contested the same on the following rounds:-

- a) The Army Welfare Housing Organization (AWHO) is a society, registered to provide dwelling units, to serving and retired Army Personnel as well as the Widows, at **"No Profit and No Loss Basis"**. **The dwelling units are constructed on self-financing basis and the cost is based on actual land & construction cost with a marginal loading of establishment cost.** Hence, the financial model of AWHO does not permit refund and its interest, when the project is delayed due to reasons beyond their control, as no surplus funds are available for this service. All group housing projects are made by contributions by the allottees and short term borrowings from financial institutions like Banks, HUDCO and National Housing Bank. No grants or aid is received by them for carrying out welfare activities. The instalments paid by the members are not invested to earn interest.
- b) On 11.07.2007, vide application, the complainant had applied for a dwelling unit in a group housing scheme at Dwarka, New Delhi developed by the respondent and due to non-availability of the unit in Dwarka, New Delhi on 03.06.2008, the complainant requested the respondent to transfer his registration from Dwarka, New Delhi to Jaipur, Rajasthan. On 03.02.2010, once again, the complainant requested to change the unit in question from Jaipur, Rajasthan to Mohali, Punjab. On 28.09.2010, the respondent informed about the tentative status of the project at Mohali, Punjab.
- c) On 15.10.2010, respondent issued booking letter in favour of the complainant and informed about the status of the project, which was duly accepted by the complainant. As per booking letter, the tentative cost of the unit was Rs.52,40,213/- , which did not include the cost of the car parking area and other charges. The final cost of complainant's dwelling unit was Rs.50,90,000/- excluding cost of car parking, society corpus funds and facility management charges etc. and not Rs.52,40,000/-.
- d) On 23.03.2015, the complainant was informed that the tentative cost of the Dwelling Unit would be now Rs.60,00,000/- and proposed completion of the project would be September, 2015, which was accepted by the complainant at that time.
- e) On 16.10.2015, the respondent informed the complainant that the draw of lots for specific floor and parking spaces in the project has been postponed due to technical reasons and fresh date thereof shall be intimated accordingly. Subsequently, on 27.04.2016 it was intimated to the complainant by the respondent that draw of lots for specific floor and parking spaces in the project shall be held on



23.06.2016 and pursuant to the same, on 27.06.2016 the complainant was informed that he had been allotted Dwelling Unit No. 0601 at 6th Floor in Block-F a twin car parking under basement being No. F-TCPB-B25T, which was accepted by the complainant (Annexure C-17).

f) Vide letters dated 24.10.2016 and 01.06.2018, the complainant was informed is likely to be handed over.

g) On 02.07.2018, complainant inquired about the status of the project through email and on 16.08.2018 respondent's responded upon the email and explained the queries of it. Subsequently, on 23.08.2018, the respondent society informed to the complainant about the handing over instructions of the dwelling unit and twin car parking. The respondent issued a letter dated 01.10.2018 for handing and taking over of the dwelling unit allotted to the complainant.

h) Vide email dated 29.09.2018, the complainant sought withdrawal from the project and demanded refund of the full amount paid by him alongwith interest on it. Also, on 22.10.2018, the complainant visited his unit and found certain short comings in it and requested the respondent to rectify the same.

i) On 14.05.2019, the complainant was informed that as per the policy decision of the Board of management of the respondent, the allottees cannot be allowed to withdraw from the scheme after the issuance of the handing/taking over letter is issued and as per request dated 22.10.2018, the shortcomings had been rectified by the respondent.

j) The date of instalments was proportionately deferred, as per the progress of the construction work. The project in question was a part of overall site of M/s. Ansal Properties and Infrastructure Ltd., which was completed by the respondent in June, 2017. After completion, respondent applied for occupation certificate before Chief Administrator, GMADA. In rebuttle, Chief Administrator, GMADA informed that the same was not granted due to pending works on the part of Ansal Group. Thereafter, reminders have also been issued to GMADA on 23.06.2018, 17.11.2018 and 18.12.2018, but all in vein and till date notice Occupation Certificate could be obtained by the respondent.

k. GMADA issued a Partial Completion Certificate on 17.03.2021 and Completion Certificate of the same date too.

l. As per the rules applicable to the applicants while applying for flats/apartment/unit to be constructed by AWHO, the allottees cannot refuse or cancel membership without the prior approval of AWHO. The AWHO carries out survey and estimate the requirements of housing by Defence Personnel and then calls the name from interest persons. After examining the various data, suitability, no. of applicants, safety etc, the project is undertaken on standalone basis with the self-finance basis



on **No Profit-No Loss Basis** making it clear that the final cost may vary due to various factors and market forces. Technically, the AWHO does not act like a promoter but more as a serving organization to its interested members of project as a service to the cause for housing.

5. The complainant filed rejoinder controverting the allegations of the written reply filed by the respondent and reiterating the averments of the complaint.

6. The violations and contraventions 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 enquiry.

7. Both the parties argued the same case on 06.06.2023. The facts of the case are that on 15.10.2010, the complainant booked a dwelling unit in the project namely Harbhajan Vihar (AWHO), situated in Sector 114, Mohali and Unit No. F-601 was allotted to him after holding draw of lots on 23.06.2016. The amount paid by the complainant amounting to Rs.61,39,125/- is also not in dispute. The project was to be completed within 3 years from the date of booking of the dwelling unit. Delay in delivery of possession is also admitted but the date of payment of instalments were also, proportionately deferred, as per the progress of the construction work, which was also intimated to the complainant as well as to the other allottees. The complainant sought refund by writing an email on 28.04.2019. The respondent did not agree to the refund, leading to the complaint and is the cause of grievance to the appellant in the present complaint.

8. Ld. Counsel for the complainant argued that the complainant made the payments as per schedule after booking and allotment of the dwelling unit. He even agreed to the enhanced price of the dwelling unit. There had been stipulation for completing the construction within the specified limits, but, the extension in the same had been obtained by the respondent by granting concessions to the complainant in the shape of re-scheduling the dates of the payments. The argument then was that after prolonged delay, the respondent finally issued the letter for offer of possession to the complainant in respect of the unit subject to payment of balance amount payable to the respondent and the complainant paid the said amount, and the clearance was issued by the respondent for handing over and taking over of the possession. It was noticed by the complainant that there were defects in the unit, which were pointed out to the respondent vide letter dated 22.10.2018 in this behalf for rectifying the same. The respondent did not remove the said defects. The respondent had supplied copy of the completion certificate and occupancy certificate issued by the competent authority before handing over the possession of the unit. The learned representative for the complainant stated that due prolonged delay in completion of the project, the offer for delivery of possession was defective and incomplete entitles the complainant for refund of the amount.



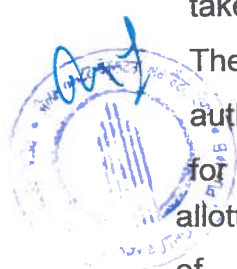
9. It is contended by the Ld. Counsel for the complainant that in view of the observations made by the Hon'ble Supreme Court in M/s. New Tech Promoters and Developers Ltd. (supra) in Para 78 is that:-

"78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. v. Anil Patni and Another, 2020(10) SCC 783 held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:-

"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

On the other hand, Ld. Counsel for the respondent justifies that the complainant had a right to withdraw from the project before a valid offer of possession but not after the valid offer of possession.

10. Further, Ld. Counsel for the respondent contended that the respondent, in fact, was working for the betterment of the armed forced in providing the accommodation on 'No Profit No Loss' basis. The complainant already having residential accommodation, applied for purchase of residential unit initially in a Scheme of AWHO at Dwarka, New Delhi, which was further changed on his request to Jaipur (Rajasthan). Further complainant again requested for change from Jaipur to the present project at Mohali. It shows that he was speculative buyer and was not purchasing the property for his residence. It was further argued that the project of the respondent was complete by 23.08.2018 when handing over/taking over instructions were issued to the complainant vide Annexure R-22 of the reply, and the application was made before the Competent Authority GMADA for issuance of the Completion Certificate and occupancy certificate vide letter Annexure R-25 of the reply on 07.07.2017. The concerned authorities did not process the application of the respondent as the completion or partial completion of the Ansal's Link-1 in which the group housing project of respondents was located was not yet taken by that promoter. Therefore, their request could not be independently processed. The further argument was that matter had been taken up time and again with the GMADA authorities, but, the completion certificate and occupancy certificate were not being issued, for which the respondent could not be blamed. The respondent submitted that 600 allottees (approx.) in the same project had already taken possession of their respective units and were staying. They also formed the Residents

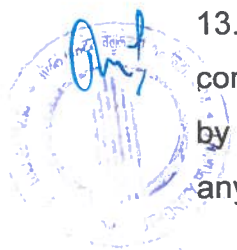


Welfare Association for carrying out the necessary maintenance activities and providing amenities in the common areas and the locality. It was submitted by the Ld. Counsel for respondent that once the project was complete, a valid offer letter for possession was issued to the complainant, who after ascertaining the same had made the balance payment, but, was not prepared to take possession on flimsy grounds probably because there was slump in the Real Estate Market as he had initially intended to purchase the property with the sole object of selling at a premium. On 22.10.2018, the complainant made request to the respondents to rectify the defects relating to the unit in question, which was rectified on 14.05.2019 by the respondent.

11. The project was complete at the time of offering the letter of possession by the respondent on 23.08.2018 when handing over/taking over instructions were conveyed to the complainant vide Annexure R-22 of the reply. The letter for clearance for handing over and taking over of possession of the dwelling unit was issued on 01.10.2018 vide Annexure R-22 of the reply regarding offer of possession to the complainant alongwith demand of balance sale consideration. The complainant however at that stage wrote a letter dated 22.10.2018 (Annexure R-23 of the reply) stating certain deficiencies in the fitting and fixtures.

12. The respondent applied with the competent authority i.e. GMADA for issuance of the completion certificate vide its letter dated 07.07.2017. The GMADA authorities replied on 08.09.2017 expressing their inability for processing their application on the ground that Ansal's Golf Link-1 of whose project, this project of the respondents was a part had not applied for issuance of completion certificate. However, on behalf of the respondents, further efforts were made to impress upon the GMADA Authorities for doing the needful by writing letters dated 23.06.2018, 17.11.2018 and 18.12.2018. The project was technically complete with all the infrastructure except the completion certificate to be issued by GMADA which did not issue due to other reasons, not relating to any issues of construction, fixtures, structural defects or deficiencies. The allottee wanted to take possession and reside as the flats/apartments were ready, fit and habitable. Keeping the flat/apartment vacant deteriorates the fixtures in absence of regular use and cleanliness. Moreover, many allottees were staying on rent and other wanted to shift from cities on account of Family requirements. They were pressing for possession which was granted/given. In this situation the respondents started delivering the possession of the dwelling units from the project of the case in hand and possession was delivered to many allottees. This plea of the respondents is supported by documents, existence of **Resident Welfare Association** for maintenance services and providing other amenities in the locality of the project in the case in hand vide letter dated 07.02.2019 and 06.05.2019 Annexure R-27 (colly). There are different photographs placed on record indicating the project of the case in hand to be complete.

13. In view of above discussion, it is apparent that in the absence of issuance of completion certificate and occupancy certificate by the GMADA authorities though applied by the respondent, it cannot be said that the project of the case in hand was incomplete in any manner. Otherwise also, even the GMADA authorities had not raised any objection that



the project was not complete and the possession was handed to many allottees by the respondent. In such a situation, it was the duty of the complainant to have led probative documents to indicate as to how and in what manner the project was not complete. Simply pointing out certain defects for making it a ground for not to take possession does not serve the purpose, in the circumstances of the case in hand.

14. Provisions of RERD Act, 2016 has changed the equilibrium of rights and duties of allottees and promoter and made favourable to the allottees so as to protect their interest, further, with an aim to promote the real estate sector, ensure sale of building/plot/apartment in an efficient manner. The rights and definition of Consumer under Consumer Protection Act, 2019 and allottee under RERD Act, 2016 are different with different rights and protection *vis-à-vis* seller/promoter. The Real Estate (Regulation & Development) Act, 2016 is a specialised legislation with clear objective and welfare of a category of consumer/buyer i.e., allottee(s). There are new and more obligations of promoters under RERD Act, 2016 *vis-à-vis* the sellers for buyers. The new Act has come with a package of set of rights, duties and obligations for both i.e. promoters and allottees. The allottee is required to take possession within 2 months after promoter obtaining OC/CC from competent authority as per Section 19(10) of the Real Estate (Regulation & Development) Act, 2016.

15. The dates mentioned in the "Agreement for Sale" are sacrosanct as far as the agreement entered after 01.05.2017 on coming into existence of RERD Act, 2016. It has been held in number of judgments that for possession mentioned in agreement for sale is sacrosanct and overrules the date mentioned for completion of project approved by RERA. However, in a case of ongoing project where the project has been registered and possession date was mentioned after 01.05.2017 but the "agreement for sale" was entered before 01.05.2016 may be required to be altered due to change in equations of rights & liabilities of promoter casted upon them by RERD Act, 2016 and RERA grants completion date of payment after due consideration of facts and circumstances of the case. It may be unfair to the promoter to give best of rights to allottee of both the period i.e., date of possession as per agreement prior to coming into force of RERD Act, 2016 and getting all facilities and rights provided by RERD Act, 2016. It is likely that fulfilling of many obligations including OC/CC may take more time while earlier the possession was being give by promoters without fulfilling many obligations including obtaining of OC/CC. Therefore, the issues of possession do arise & legal obligations in these transit project, while in any 'Agreement for Sale' entered after 01.05.2017, the date mentioned for possession is sacrosanct for giving rise to various rights to the allottees. It has been noted that after coming into force of RERD Act, 2016, the promoter normally mentions the same date of possession as has been given for completion of project by RERA while registering the project.

16. It is worth mentioning that the project had started much before the RERD Act, 2016 came into force. The terms & conditions of agreement and the manner & way of working of AWHO was well known and accepted by the allottees. The onset of RERD Act, 2016 has defined rights & liabilities of both promoter and allottees *vis-à-vis* each other under the Act.



date of possession as has been given for completion of project by RERA while registering the project.

16. It is worth mentioning that the project had started much before the RERA Act, 2016 came into force. The terms & conditions of agreement and the manner & way of working of AWHO was well known and accepted by the allottees. The onset of RERA Act, 2016 has defined rights & liabilities of both promoter and allottees vis-à-vis each other under the Act. The cost of the project was to be shared by all allottees and it was known that the rates will fluctuate as per the market costs of the material purchases and other expenses.

17. The AWHO technically falls under the definition of promoter u/s. 2(zk)(iv) as a society which constructs apartments for its members but it is neither a commercial body nor for profits although do distribution expenses among members.

18. The small defects not relating to structure, design, quality of constructions, fixture and only relating to issues of maintenance, which may occur due to passage of time relating to issues of regular cleanliness and maintenance cannot go to the root of the relationship of allottees and promoter to rescind the contract and asking for refund alongwith interest after valid offer of possession. The further action taken after offer of possession relating to deposit of assessee, maintenance fee etc. shows that the said minor defects were pointed out self-scoring points to cancel the agreement and claim refund alongwith interest by the allottee.

19. The refusal to take possession of the flat on pretext of repair which become due, due to time complainant and AWHO making liable for allowing the complainant to cancel the allotment and seek refund alongwith interest while it has allowed change of city twice i.e., Delhi, Jaipur and to Mohali so as to fulfil its object of providing houses to the officers and other defence personnel including window of army personnel at cost price. Every project is developed on stand-alone basis and the costs are claimed from all members on a rational equitable basis. It is difficult financing to keep such margins by AWHO and it is mandatory as per its constitution not to allow members to cancel the membership from project after possession is offered and this clause was there when the complainant-allottee applied for the membership to allot an apartment. The complainant unconditionally accepted the terms of allotment and Booking Letter vide letter dated 08.11.2020. There was *bonafide* delay and change in price. AWHO made a valid offer and letter issue for possession to complainant, who after ascertaining the allotment paid the balance amount.

20. The project was not incomplete when offer of possession was made although completion certificate/occupancy certificate by GMADA was not issued due to same technical reason.

21. The offer of possession was made on 23.08.2018 when handing over/taking over instructions were conveyed to the complainant and thereafter letter for clearance for



handing over and taking over of possession of the dwelling unit was issued on 01.10.2018, which is part of letter Annexure R-22 (colly) offering possession to the complainant alongwith demand of balance sale consideration by the respondent to the complainant much prior to the filing of the present complaint indicating that the project was complete. In view of above discussion, but for delay in completion of the project to which the complainant acquiesced by taking the concessions made by the respondent, no default on the part of the respondent could be pointed out under Section 18 of the Act. Therefore, the complainant is not entitled to seek the refund of the amount and there being no merit in the complaint, the same is hereby **dismissed**.

22. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.


Chandigarh
Dated: 10.07.2023




(Rakesh Kumar Goyal),
Member,
RERA, Punjab.

Registry is directed to send a copy of this order to the following for information and necessary action: -

1. Sh. Praveen Gangwani r/o B-90, Jal Vayu Vihar, Sector 30, Gurgaon (Haryana)
2. Army Welfare Housing Organization, South Hutments, Kashmir House, Rajaji Marg, New Delhi.
- 3, The Project Director, AWHO, AWHO Complex, Sector 114, SAS Nagar (Mohali), Punjab.
- ✓ 4. The Record File.


(Sawan Kumar),
P.A. to Member (RKG),
RERA, Punjab.