

**BEFORE SHRI MALWINDER SINGH JAGGI, IAS,
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

I.

Complaint No. GC No.0129 of 2022
Date of Institution :04.02.2022
Date of Decision:27.06.2024

Savinderjeet Hospitalities Pvt Ltd., Cabin # 4, 1st Floor, Metro Plaza, SCO 54-55, (Madhya Marg), Sector 9-D, Chandigarh, PIN Code-160017

...Complainant

Versus

1. ATS Infrabuild Pvt Ltd., ATS Casa Espana, NH 21, Vill Badmajra, Sector 121, (Near Verka Milk Plant), Kharar, Sahibzada Ajit Singh Nagar (Mohali), PIN Code- 160055
2. Shiwalik Greens Maintenance Pvt Ltd., SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), Punjab PIN Code -160071
3. Shiwalik Estates, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071
4. Shiwalik Site Planners, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071

....Respondents

II.

Complaint No. GC No.0130 of 2022
Date of Institution :04.02.2022
Date of Decision:27.06.2024

Savinderjeet Hospitalities Pvt Ltd., Cabin # 4, 1st Floor, Metro Plaza, SCO 54-55, (Madhya Marg), Sector 9-D, Chandigarh, PIN Code-160017

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4. Shiwalik Site Planners, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071

....Respondents

III.

Complaint No. GC No.0131 of 2022

Date of Institution :08.02.2022

Date of Decision:27.06.2024

Savinderjeet Hospitalities Pvt Ltd., Cabin # 4, 1st Floor, Metro Plaza, SCO 54-55, (Madhya Marg), Sector 9-D, Chandigarh, PIN Code-160017

...Complainant

Versus

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3. Shiwalik Estates, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071
4. Shiwalik Site Planners, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071

....Respondents

IV.

Complaint No. GC No.0132 of 2022

Date of Institution :08.02.2022

Date of Decision:27.06.2024

Savinderjeet Hospitalities Pvt Ltd., Cabin # 4, 1st Floor, Metro Plaza, SCO 54-55, (Madhya Marg), Sector 9-D, Chandigarh, PIN Code-160017

...Complainant

Versus

1. ATS Infrabuild Pvt Ltd., ATS Casa Espana, NH 21, Vill Badmajra, Sector 121, (Near Verka Milk Plant), Kharar, Sahibzada Ajit Singh Nagar (Mohali), PIN Code- 160055
2. Shiwalik Greens Maintenance Pvt Ltd., SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071
3. Shiwalik Estates, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071
4. Shiwalik Site Planners, SCO No 510, Sector 70, Sahibzada Ajit Singh Nagar, Punjab Sahibzada Ajit Singh Nagar (Mohali), PIN Code -160071

....Respondents

Present: Capt. Bhalinder Singh Grewal, Authorised Representative of the complainant
Respondent no.1 exparte
Shri Pankaj Bains, Advocate for respondents no.2 to 4



ORDER

These four complaints will be decided by a common order since similar points of law and facts are involved in each of these.

2. A copy of the order be placed on each file.
3. These complaints are under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016) filed by the complainant against the respondents alleging violation of Section 18(1) of the Act of 2016 by way of delay in handing over possession of the Flat in the "ATS Casa Espana" developed by respondent no.1.
4. Following are the details of the complaints:

Sr. No.	No. Of Complaint	Name of the complainant	Flat No.	Cost of the Flat In Rs.	Amount paid in Rs.	Date of signing of the Builder Buyer's Agreement	Date of Delivery of possession
1.	0129/2022	Savinderjeet Hospitalities Pvt. Ltd.	1032	70.00 lakhs	78.76 lakhs	04.08.16	03.08.18
2.	0130/2022	Savinderjeet Hospitalities Pvt. Ltd.	1031	70.00 lakhs	78.76 lakhs	04.08.16	03.08.18
3.	0131/2022	Savinderjeet Hospitalities Pvt. Ltd.	11031	70.00 lakhs	78.76 lakhs	06.08.16	05.08.18
4.	0132/2022	Savinderjeet Hospitalities Pvt. Ltd.	11032	70.00 lakhs	78.76 lakhs	06.08.16	05.08.18

5. For facility of reference, the facts have been taken from Complaint No.0129 of 2022. In brief the contents of the complaint are that the complainant entered into an Apartment Buyer's Agreement on 04.08.2016 after making a full and final Payment including Basic Price, External Development Charges, Service Tax and TDS amounting to Rs.78,76,000.00 for the Flat No.1032, Tower-1, in the project namely "ATS Casa Espana". It is also stated that the remaining amount of Rs.1,50,000.00 towards maintenance deposit and power backup were to be paid at the time of delivery of possession only. It is further stated by the complainant that the building is a far distant away from completion

and possession of the building is not likely to be delivered. As per Clause 6.2 of the Agreement dated 04.08.2016, possession was to be handed over within a period of 18 months plus with 6 months' grace period i.e. by 03.08.2018. The complainant has also referred relevant Clauses of the agreement. It is further the case of the complainant that it was conveyed to him that first party will send offer of possession of the Unit/Apartment to him as and when they received the Occupancy Certificate from the Competent Authority. It is further stated that despite making 100% payment the complainant is not aware as and when possession would be delivered to him. In support of his case the complainant has attached Annexures 1 to 8. The relief sought by the complainant is for issuance of direction to respondents to deliver lawful possession of the apartment to him after receiving the occupancy certificate and also payment of interest for the period of delay in handing over lawful possession.

6. The broad contours of other complaints are similar.

7. Upon notice respondent no.1 appeared through learned Counsel and submitted their reply. Certain preliminary objections have been taken by the respondent no.1 to the effect that the Apartment Buyer's Agreement was executed between the complainant and respondents no.2 to 4 on 04.08.2016 and there is no mention of the answering respondent no.1 therein. However, a Development Agreement was executed between respondent no.1 and respondent no.2 on 15.06.2012 and there was a clear mention that out of all the apartments that would be developed by respondent no.1, certain number of apartments would be transferred to respondent no.2 who would further deal completely with these apartments and referred Clause 2.2 and 2.4 of the development agreement. It is contended by respondent no.1 that

certain commercial part of the project in the form of Units had been transferred to respondent no.2 and the present Unit No.1032, Tower-1, 3rd Floor, ATS Casa Espana belongs to respondent no.2 thus the rights and liabilities vested with respondent no.2 only and respondent no.1 has no role to play. All the payments have been received by respondent no.4/Shiwalik Site Planners Ltd. Respondent no.1 has attached Annexure R-2, a list which showed that the present Flat No.1032, Tower-1, 3rd Floor, ATS Casa Espana had been transferred to Shiwalik Greens Maintenance Pvt. Ltd. as such this unit is in complete control of Shiwalik Greens Maintenance Pvt. Ltd.

8. On merits, the learned Counsel for the respondent no.1 has mostly reiterated the contents of the preliminary objections.

9. The learned Counsel for the respondents no.2 and 3 also submitted their reply. It is stated that respondents no.2 and 3 entered into a development agreement with respondent no.1 being the owners of land measuring 15.475 acres on 15.06.2012 for development and construction of Group Housing Residential Complex/Commercial Complex. As per Clause 2.1 of the said development agreement the entire development rights over the project land was granted to the developer/respondent no.1 and as per Clause 2.4 the answering respondents were not to interfere with the construction activity and development of the project and entire cost and expenses were to be borne by respondent no.1/developer. As per clause 18 of said agreement respondent no.1 was to complete and occupation of the project within a period of 48 months from the date of sanction of building plans etc. Further as per clause 2.2.1 the answering respondents were entitled to 35% of the entire saleable area and developer was entitled to 65% of the developer's demarcated area. The



answering respondents were free to deal with units/area allotted to it by the developer/respondent no.1 and execute agreement to sell and sale deed and except this there was no role of them. The answering respondents admitted about entering into Apartment Buyer's Agreement in respect of Flat No.1032 at 3rd Floor, Tower 1 in ATS Casa Espana with the complainant on 04.08.2016. Learned Counsel for the answering respondents further contended that it was clearly mentioned in the Apartment Buyer's Agreement that all development rights over the entire project land have been transferred to respondent no.1 by the answering respondents as such the developer/respondent no.1 was responsible for construction and development of the project. It is further stated that in view of the development agreement, if there is any delay on the part of respondent no.1 in completion of the project, then respondent no.1 would be responsible. Further, from the affidavit tendered by respondent no.1 it is clear that respondent no.1 is the promoter of the project.

10. On merits execution of development agreement with respondent no.1 and thereafter execution of Apartment Buyer's Agreement in respect of Flat in question has been admitted by the answering respondents. The answering respondents also admitted the cost of the project to be Rs.70.00 lakhs and Rs.8,76,000/- towards EDC and service tax etc. It is admitted that the complainant has deposited Rs.70.00 lakhs towards the cost of flat and remaining amount of Rs.8,76,000/- was towards EDC and service tax. The complainant is not entitled for any interest on the amount of EDC and service tax. The complainant is not entitled for any interest on the amount of Rs.70.00 lakhs firstly there has been no delay which is directly attributed to respondent no.1 and secondly, if there is any delay in completion of the project that is

on account of Covid-19 pandemic. Lastly, it is stated that delayed compensation is to be paid as per the terms of Apartment Buyer's Agreement.

11. Rejoinder was filed by the complainant reiterating the contents of his pleadings. The complainant has referred Clause 2.1, Clause 2.4, Clause 3.1, Clause 3.5.3, Clause 5.3, Clause 8.1.2, Clause 9.1, Clause 9.4, Clause 10.16, Clause 10.2.1 and Clause 10.2.5 in support of his contention that developer/respondent no.1 was responsible for the development of the project and is directly responsible for the delay.

12. When the matter was taken up on 27.06.2024 for arguments none was present on behalf of respondent no.1. However, an email has been received from respondent no.1 seeking adjournment. The complainant who was present stated that the respondent no.1 is not coming forward and has taken various dates for arguing the matter. The complainant further stated that despite making 100% payment legal possession of the Flat has not been given to him. He is ready with his arguments and he be heard today.

13. A message was conveyed to the learned Counsel for the respondent no.1 to attend the court proceedings. However, nobody turned up despite waiting for one hour. As such respondent no.1 was proceeded against exparte. However, reply on behalf of respondent no.1 is already available on record and is being considered on merits of the case.

14. Complainant addressed his arguments to the effect that despite making 100% payment of Rs.78.76 lakhs including EDC and Service tax, towards the Flat, legal possession has not been delivered to him. As per Clause 6.2 of the apartment buyer agreement dated 04.08.2016, possession of the Flat was to be



delivered to him within 24 months i.e by 03.08.2018. However, the same has not been delivered to him so far as such he is entitled for the interest for the period of delay in handing over actual legal possession.

15. On the other hand, Shri Pankaj Bains, learned Advocate appeared for respondents no.2 to 4 stated that they have no role to play in this complaint as the project was to be developed by respondent no.1 as per the Development Agreement executed between respondent no.1 and respondents no.2 and 3.

16. Since respondent no.1 did not appear, I have perused the reply submitted by it.

17. From the above pleadings of the parties, it is clear that the prayer of the complainant is for legal possession and till its delivery interest for the period of delay in handing of possession of the Flat to the complainant.

18. I have gone through the record and considered the submissions made by the parties.

19. From the above facts, one thing is clear that legal possession of the flat has not been handed over to the complainant till today despite lapse of the date 03.08.2018 mentioned in the apartment buyer agreement dated 04.08.2016, wherein it was clearly mentioned that *"the construction of the unit/apartment is completed within 18 months with a grace period of six months from the date of this agreement"*.

20. The contention of respondents no.2 and 3 that the delay was due to Covid-19. It is held that as per agreement the possession was to be delivered on 03.08.2018 and the Covid-19 was after March 2020. Further, the contention of these respondents that the complainant is not entitled for interest on EDC etc. has no legs to stand as the Hon'ble High Court of Punjab and Haryana in RERA

Appeal No. 95 of 2021 (O&M) titled "Emaar India Limited (formerly known as Emaar MGF Land Limited) Versus Kaushal Pal Singh alias Kushpal Singh" has held as under:

"10. On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. Such interest for every month of delay is payable on the entire amount paid by the allottee. The interest has been defined in Section 2(za) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. The interest shall be payable on the complete amount paid by the allottee to the promoter. The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount of H-VAT, GST, EDC etc. under proviso to Clause (1) of Section 18 of the 2016 Act to the allottee. Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to develop his land into a colony is liable to pay the proportionate development charges. In other words, the liability to pay the amount is on the licensee (owner-promoter)".

21. Further there is no iota of evidence about the denial on the part of all the respondents regarding the execution of Apartment Buyer Agreement and Development Agreement between them and the complainant. The terms and conditions of these agreements bind all of them.

22. As contended by the complainant since possession has not been handed over to him, he cannot wait indefinitely for delivery of possession. It is clear from record that the complainant had paid 100% sum of Rs.78.76 lakhs including, basic sale price, EDC and Service Tax etc. Thus, it is established on record that the

respondents failed to deliver legal possession of the flat to the complainant in time i.e by 03.08.2018. As such the complainant is entitled to interest as per Section 18(1) of the Act of 2016 till the delivery of actual physical possession of the flat with Occupancy Certificate.

23. The question now is to be decided who is liable to pay interest for the period of delay in handing over possession to the complainant.

24. It is noted that Development Agreement was signed on 15.06.2012 between respondent no.1 on one hand being the developer and respondents no. 2 to 4 on the other hand being the landowners of the project land.

The Apartment Buyer Agreement was executed on 04.08.2016 between respondent nos. 2 to 4 on one hand and complainant on the other hand.

24. It is clear that the Apartment Buyer Agreement dated 04.08.2016 was executed between respondents no.2 to 4 and the complainant only.

25. Perusal of the above said Apartment Buyer Agreement dated 04.08.2016 further revealed that respondents no.2 to 4 allotted the Flat No.1032 to the complainant and received the amounts towards sale consideration of the flat as mentioned in the Schedules attached with the above said Buyer Agreement. In the Schedule-III attached with the Apartment Buyer Agreement annexed by the complainant with this complaint clearly finds mention the details of the pricing of the flat to be Rs.70.00 lakhs. The complainant has placed on record copies of all the receipts of payments issued by respondent no.4/Shiwalik Site Planners

towards flat. Respondents no.2 to 4 have not denied the receipt of these payments in their reply.

26. Further the Development Agreement dated 15.06.2012 executed between respondent no.1 and respondents no.2 to 4 revealed that respondent no.1 is only the developer of the project on the land of the land owners i.e respondents no.2 to 4.

27. Following clauses 2.1 and 2.2.1 of the Development Agreement dated 15.06.2012 is relevant which is reproduced here:

"2.1 Grant of the Development Rights

*2.1.1 Pursuant to this Agreement, Owners hereby irrevocably, absolutely and unconditionally grants to the developer the entire uninterrupted exclusive, full and free right to construct, develop ("**Development Rights**") Project inter alia to be built over the Project Land in such manner as the Developer may deem fit, and the Developer hereby agrees to acquire the same from the Owners, on the terms and conditions contained hereunder.."*

"2.2 Consideration

2.2.1 In consideration for the grant of the Development Rights over the Project Land to the Developer by the owners in terms hereof, owners shall be entitled for 35% (thirty five percent) of the entire saleable area of the Project including the commercial part of the Project together with usage rights of common areas, facilities and amenities and together with proportionate 35% of total car parking spaces/slots in the basement levels together with right to own and possess proportionate impartable indivisible share in the land underneath in proportion to their respective land holding detailed in Annexure I and II, as demarcated by the Developer at the time of finalization of the plan. The Developer shall be entitled to retain the remaining 65% (sixty five percent) of the Developer's demarcated area".

28. The above clauses further strengthen the case of respondent no.1 that it is only developer of the project and the Flat no.1032 falls within the share of respondents no.2 to 4 and respondent no.1 has no concern with the complainant as the Flat was allotted to the complainant by these respondents only (*Page-4 of the*

Apartment Buyer Agreement dated 04.08.2016 – 1. DEFINITIONS under the head "Apartment" – shall mean residential apartment bearing No.1032 on the 3rd floor of Tower 1, having Super Built Up Area of 3300 Square feet, which includes a Built Up Area of 2936 square feet which is more specifically described in Schedule-I hereto along with all easements, privileges, rights and benefits attached thereto) - and also received the payments from the complainant. Respondent no.1 has attached a list of flats (Annexure R-2 Page 34 along with his reply) which as per development agreement falls under the ownership of respondents no.2 to 4. The flat no.1032 finds mentioned at Serial No.4 of the list.

29. Further, in the Clause 6.2 of the Apartment Buyer Agreement dated 04.08.2016 it was clearly mentioned that "*..the first party (respondents no.2 to 4) shall ensure that the construction of the unit/apartment is completed within 18 months with a grace period of six months from the date of the agreement*". i.e by 03.08.2018.

30. If the developer/respondent no.1 has not constructed the flat of the complainant as per the terms and conditions of the Development Agreement executed between respondent no.1 and respondents no.2 to 4, it is their inter-se dispute and the complainant has no concern with the same. It is the bounden duty of respondents no.2 to 4 to hand over possession of the flat to the complainant as per Clause 6.2 of the Apartment Buyer Agreement as they have received the payments of the flat.


31. Thus, the argument of Shri Pankaj Bains, learned Advocate appeared for respondents no.2 to 4 that they are the only landowners and have no concern with the complainant is belied by

the documentary proof available on record. Adverse inference can be drawn against these respondents.

32. It is also worth to note here that the Development Agreement was signed on 15.06.2012 whereas the Apartment Buyer Agreement was executed on 04.08.2016. Both the executants of Development Agreement demarcated their respective share in their favour i.e 35% and 65% respectively. Thus, it is clear that the respondent nos. 2 to 4 have sold Flat No.1032 out of their share to the complainant as demarcated in terms of Development Agreement.

33. From the above discussion, it is crystal clear that Apartment Buyer Agreement dated 04.08.2016 was executed between the complainant and respondents no. 2 to 4. The flat no.1032 was allotted by respondent nos. 2 to 4 to the complainant as is clear from the Buyer Agreement itself. The complainant had further made the payments to respondents no.2 to 4, who issued him receipts thereof which have been attached with the complaint. Respondent no.1 is only the developer of the project.

34. As a result of the above discussion, this complaint is accordingly accepted and respondents no. 2 to 4 are directed to pay interest from the date of deposit of the amount of Rs.78,76,000.00 i.e w.e.f 04.08.2018 till the date of this order at the first instance at the rate of **10.95%** per annum (today's highest MCLR rate of **8.95%** plus 2%) prescribed in Rule 16 of the Punjab State the Real Estate (Regulation and Development) Rules, 2017. It is also further directed that the interest should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from the date of receipt of this order.



35. Thereafter respondents no.2 to 4 shall further pay interest at the prevalent rate applicable at the time of delivery of possession to the complainant duly prescribed in Rule 16 of the Punjab State the Real Estate (Regulation and Development) Rules, 2017 after the date of this order till the date of actual delivery of possession.

36. In view of the above terms, the remaining three complaints i.e bearing No.130 of 2022; 0131 of 2022; and 0132 of 2022 are also allowed. The respondents no.2 to 4 are directed to pay interest to the complainant w.e.f. 03.08.2018 (in the complaint bearing No.130 of 2022 and w.e.f. 05.08.2018 (in the complaints No. 0131 of 2022; and 0132 of 2022) respectively as per the rate of interest and payment period mentioned at para nos.33 and 34.

37. File be consigned to record room after due compliance.

Announced.


(Malwinder Singh Jaggi), IAS
Real Estate Regulatory Authority