

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No. GC No.0260 of 2022
Date of Institution :21.05.2022
Date of Decision: 23.10.2024

Anand Nandan, H 503, Parsvnath Prestige, Sector 93-A, NOIDA EXPRESSWAY, Uttar Pradesh, Gautam Buddha Nagar- PIN Code 201304

...Complainant

Versus

M/S WTC NOIDA Development Company Pvt. Ltd. GF-09, M6 Plaza, Jasola, South Delhi, New Delhi-110025

(Project -WTC Chandigarh (Offices and Retail Outlets)

(Regn No. – PBRERA-SAS81-PC0074)

....Respondent

Present: Shri Jasdeep Singh, Advocate for complainant
Shri Dixit Garg, Advocate for respondent

ORDER

This complaint was instituted on 21.05.2022 in Form 'M' by the complainant in his individual capacity under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) against the respondent seeking refund along with interest on it for the delayed period.

2. The brief facts of the complaint made that respondent lured the complainant to invest in its commercial project named 'WTC Chandigarh (Offices and Retails)' being developed at WTC Towers, Site No.2, Block-D, Aerocity, District SAS Nagar (Mohali), Punjab -

140603. It is further submitted that on promise to deliver the unit on time being within 48 months, the complainant booked a lockable office space bearing Unit No.624, having super area of 500 Sq. Ft. in Tower-A in the project @ Rs.6,257/- per Sq. Ft. amounting to Rs.31,28,500/- to be paid as per the terms and conditions of the 'Developer Buyer Agreement' entered into between the complainant and respondent on 11.06.2016. It is further submitted that the complainant paid all payments as per the terms of the above said agreement as and when the same were due. It is further stated that the complainant has paid Rs.24,85,307/- till date. It is further averred that as per agreement the office space was to be handed over to the complainant within 48 months from the date of the said agreement i.e. 11.05.2020 or latest by 11.11.2020 if the extension accorded by the Government of India as per notification dated 13.05.2020 is taken into consideration. The complainant stated that since the respondent has failed to deliver the said unit within the stipulated time, the time extended under RERA Act is not a ground to supersede the agreed time, that the respondent has breached the terms of RERA, the respondent is liable to refund the amount paid by the complainant and accordingly sought relief that respondent may be directed to refund Rs.24,85,307/- paid along with interest upon the said payment from the date(s) of payment. In support of his contention the complainant has enclosed various documents including Builder Buyer Agreement, Ledger of payment, correspondence between complainant and respondent and photographs of site.

3. Notice was issued to the respondent on 14.02.2023 for appearance and filing of reply for 27.03.2023. Shri R.S.Baweja,

Advocate appeared for the respondent on 11.05.2023 and sought time to file reply. As per the records available, the learned Counsel for the respondent submitted his reply on 20.11.2023 and thereafter the learned Counsel for the complainant submitted rejoinder on 15.01.2024.

4. In the reply submitted by the respondent on 20.11.2023 through which it is stated that the instant complaint is without cause of action, filed with *mala fide* intention and is not maintainable. It is further alleged that there is no deficiency on the part of the respondent in rendering services. It is further submitted that the date of completion of the project after extension by RERA, Punjab was 30.06.2022 and this date is to be connected to the date of offer of possession. The respondent contended that it has further applied for extension of the completion date of the project to 30.06.2024 and application is under consideration. A copy of order dated 15.05.2024 was downloaded from the web portal of this Authority, the relevant portion of the said order is reproduced below:

"25. This Authority has received letter dated 17.04.2023 about resumption of the project site. Thus, the conjoint reading of letter No. No.7206 dated 17.04.2023 and Section 7(1) of the Act of 2016 established that the respondent/promoter failed to adhere to the time scheduled mentioned in the allotment letter which resulted into resumption of project site allotted to the promoter.

26. As a sequel of above said facts and circumstances it is concluded that the respondent/promoter has miserably failed to adhere to the payment schedule mentioned in the Allotment Letter/ undertaking given by it before the Chief Administrator,

GMADA, the following registration numbers granted to all the projects of M/s WTC Noida Development Company Pvt. Ltd. i.e.

1. WTC Chandigarh (Offices)
- **PBRERA-SAS81-PC0073**
2. WTC Chandigarh (Offices and Retail Outlets)
- **PBRERA-SAS81-PC0074**
3. WTC Chandigarh (Suites)
- **PBRERA-SAS81-PC0075**

are revoked with immediate effect with the following directions to the Secretary of this Authority to send a copy of this order to the following:

- i. The Chief Administrator, GMADA, Mohali with reference to his letter No. No.7206 dated 17.04.2023.
- ii. The concerned Deputy Commissioner-cum-Collector to direct all the Registrars/Joint Sub Registrars/Sub Registrars under his jurisdiction not to execute and register any sale deed pertaining to the projects under reference.
- iii. The IT wing of this Authority will upload this order on the website of this Authority to make the general public aware about the revocation of the projects.
- iv. M/s WTC Noida Chandigarh Development Company Pvt. Ltd. with a direction not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, in any real estate projects or part of it..."

5. Thus, it is clear from the above order that the project "WTC Chandigarh (Offices and Retail Outlets) bearing registration no. PBRERA-SAS81-PC0074" in which the lockable office space bearing Unit no.624, allotted to the complainant was situated has already been revoked as such there is no application filed by the respondent for extension of the completion date is pending before this Authority.

6. It is further alleged that the date of offer of possession promised to the complainant as per agreement dated 11.06.2016 is connected with the date of completion of project, therefore the complaint is premature and is liable to be dismissed. The learned Counsel for the

respondent further contended that due to lockdown owing to outbreak of Covid-19 pandemic followed by another lockdown in 2021 the construction activities on the site was adversely effected. It is submitted that now the construction work is in full swing and the respondent would be able to offer possession soon. The learned Counsel for the respondent reiterated that the date of offer of possession had been agreed as the date of completion of the project committed before the RERA, Punjab.

7. The learned Counsel for the respondent further alleged that the respondent has not lured the complainant at any stage. It was admitted that the complainant had booked lockable office space bearing Unit No.624 and complainant has paid Rs.24,85,307/-. The learned Counsel for the respondent reiterated that this authority had granted extension of completion of project to be 30.06.2022 and the respondent had also applied for further extension of completion date of the project to 30.06.2024 which is under consideration. The learned Counsel for the respondent further emphasized that the agreed date of offer of possession promised to the complainant as per agreement dated 11.06.2016 is connected to the date of completion of project and prayed that the complaint be dismissed.

8. The learned Counsel for the complainant submitted his rejoinder on 15.01.2024 reiterating the contents of his complaint and controverted the reply submitted by the respondent. It was stated that project is still incomplete irrespective of agreed date of possession of 11.05.2020 or even the date of extension is 30.06.2024 granted by RERA and at present condition it will take at least 1-2

years. The complainant reiterated its prayer of refund and interest on delayed possession.

9. During the hearing of the complaint, the learned Counsel for the complainant argued that he was allotted Unit No.624 having super area of 500 Sq. Ft. in Tower-A @ Rs.6,257/- per Sq. Ft. in the commercial project named 'WTC Chandigarh (Offices and Retails)' being developed at WTC Towers, Site No.2, Block-D, Aerocity, District SAS Nagar (Mohali), Punjab-140603 and a Developer Buyer Agreement was entered into between the complainant and respondent on 11.06.2016. As per Clause 4.5 of this agreement the possession of the unit was to be delivered within 48 months plus six additional grace period i.e by 10.12.2020. It is further argued by the learned Counsel for the complainant that out of the total fixed price of Rs.31,28,500, the complainant has already paid Rs.24,85,307/- till date. It is further argued that the respondent has failed to deliver the office space within the above stipulated time, thus, the respondent is not interested to stay in the project and prayed that the respondent be directed to refund the amount of Rs.24,85,307/- paid by the complainant to respondent along with interest.


10. On the other hand, the learned Counsel for the respondent stated that the date of completion of the project is connected to the date of offer of possession and the revised registration granted to the respondent by this Authority on 23.09.2020 is valid upto 31.12.2022. The learned Counsel for the respondent further argued that due to lockdown owing to outbreak of Covid-19 pandemic followed by another lockdown in 2021, the project got delayed and now the

construction of the project is in full swing and prayed that the complaint be dismissed.

No other issues have been raised by either of the parties.

11. The undersigned considered the arguments of both the parties and also examined the records available.

12. From the pleadings of the parties it is clear that there is no dispute between the parties about allotment of Unit No.624 having super area of 500 Sq. Ft. in Tower-A @ Rs.6,257/- per Sq. Ft. in the commercial project named 'WTC Chandigarh (Offices and Retails)' being developed at WTC Towers, Site No.2, Block-D, Aerocity, District SAS Nagar (Mohali), Punjab-140603; entering into a Developer Buyer Agreement on 11.06.2016; as per Clause 4.5 of the agreement dated 11.06.2016 the date of delivery of possession of the unit was 10.12.2020 (48 months plus six additional grace period); total fixed price of the unit being Rs.31,28,500, and payment of Rs.24,85,307/- by the complainant till date. Till date possession of the above said Unit has not been handed over to the complainant.



13. During the hearing of this matter when a specific question was asked from the learned Counsel for the respondent whether possession has been handed over to the complainant? The answer was in the negative. Thus, it is clear that possession of the Unit has not been handed over to the complainant till date which was to be handed over on or before 10.12.2020. Therefor there is inordinate delay on the part of the respondent in delivering possession of the Unit. Regarding the Covid-19, it is a matter of record that the

Authority has allowed an extension of 6 months to all promoters for all obligations under the Act of 2016 arising after 15.03.2020. However, in this case the obligation to deliver possession of the unit was on or before 10.06.2020 as per Clause 4.5 of the agreement dated 11.06.2016 but with grace period of 6 months by 10.12.2020. Thus, there was little period of effect of Covid-19 which commenced only after 15.03.2020 and cannot be considered a reason for the inordinate delay in delivering possession.

14. In the matter of "*Imperia Structures Ltd. v. Anil Patni and Anr*" - Civil Appeal 3581-3590 of 2020) the Hon'ble Supreme Court held that "**the relevant date for delivery of possession to an allottee is the date mentioned in the agreement for sale and not the date till which the registration of the project is valid** (emphasis supplied). Thus the issue of extension granted by this Authority has no bearing on delivery of possession. Accordingly, this argument is rejected.

15. In view of above discussion, the complainant is entitled for the refund of the deposited amount along with interest thereon.

16. Failure to deliver possession of the unit as committed attracts the provision of Section 18(1) of the Act which reads 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)

*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 (emphasis supplied).*

17. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed to refund the amount of Rs.24,85,307/- along with interest at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Punjab State the Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till the date of actual refund.

18. The respondent is further directed to refund the amount deposited by the complainant along with interest within the statutory time i.e ninety days stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from the date of receipt of this order and thereafter submit a compliance report to this Authority. It may be noteworthy that any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

Announced


(Binod Kumar Singh)
Member, RERA, Punjab