

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

Complaint No. GC No.0282 of 2022  
Date of Institution : 07.06.2022  
Date of Decision: 29.11.2024

1. Jaspreet Sra,
2. Dr. Navpreet Grewal

Both residents of House No.525, Model Town, Phase-1, Bathinda,  
Punjab-151001

...Complainants

Versus

Bhanu Infrabuild Pvt. Ltd. SCO No.139-140, Sector 8-C, Chandigarh-  
160008

....Respondent

Present: Shri Vineet Sehgal, Advocate for the complainants  
Shri Ankit Kumar, Advocate for Shri Munish Gupta,  
Advocate for the respondent

**ORDER**

This complaint was filed in Form 'M' on 07.06.2022 by the complainants Jaspreet Sra and Dr. Navpreet Grewal in their individual capacity under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act) read with Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2016 (hereinafter referred to as the Rules of 2017), against the respondent M/s Bhanu Infrabuild Pvt. Ltd. seeking refund of Rs.33,60,859.84 along with interest on the amount paid for the purchase of Commercial Space/Office Space in the Commercial and Office Complex known as "International Trade Tower", Mullanpur.

2. The brief facts of the complaint are that the complainants were allotted "INTT/TWENTY SECOND/2214" having super area approx. 701.35 sq. ft./65.16 sq. meters in Commercial and Office Complex known as "International Trade Tower" at Mullanpur, being developed by respondent, vide allotment letter dated 11.04.2013. It is further submitted that on the same day i.e. 11.04.2013, an addendum agreement to the allotment letter dated 11.04.2013 was also executed between the complainants and respondent whereby the respondent assured to pay a monthly return of Rs.41,029/- to the complainants. It is further pleaded that as per the Addendum to the Allotment letter dated 11.04.2013 the respondent paid the monthly return up-till March 2021 and thereafter no charges have been paid despite repeated requests. It is further submitted that even the TDS deducted by the respondent has not been deposited by it. The complainants further contended that despite lapse of considerable period the respondent has not executed Builder Buyer's Agreement till date. The complainants have paid a total sum of Rs.33,60,859.84 till January 30.01.2014. As per Clause 30(b) of the allotment letter the date of completion of development works and offer of possession was within 36 months + 6 months grace period from the date of signing of allotment letter, but till date the basic development works have not been started by the respondent and offer of possession has not been made by the respondent to the complainants after the lapse of more than 9 years. Vide notice dated 16.05.2022, the complainants have demanded their amount along with interest paid to the respondent from December 2012 till January 2014. However, till date no initiative has been taken by the respondent in this respect. It is further contended that the respondent has breached various provisions incorporated under



Section 12, and Sector 18(a) of the Act of 2016 as such the complainants are entitled to refund of amount of Rs.33,60,859.84 along with interest from the date of payment by the complainants till the actual date of refund. It is the prayer of the complainants that the respondent be directed to refund the amount of Rs.33,60,859.84 with interest and also to pay assured monthly return from April 2021 till the date of refund of complete amount to complainants. It is further prayed that the respondent be directed to pay litigation cost of Rs.1,10,000/-

3. In support of their cases, the complainants relied upon various documents including allotment letter and addendum to allotment letter, different receipts towards making payment to the respondent.

4. Notice was issued to the respondent on 22.02.2023 to file reply within 15 days after the receipt of notice and complainants were directed to submit rejoinder on or before 10.04.2023 after receiving the copy of reply. It is noted that Shri Ankit Kumar, Advocate appeared on 10.04.2023 and was granted time to submit reply with a copy to the complainants and the matter was adjourned to 15.05.2023. However, on this date no reply was filed by the respondent and the matter was ordered to be listed on 25.05.2023 for filing of reply. On this date i.e 25.05.2023 reply was filed and a copy thereof was handed over to the complainants and the matter was adjourned to 10.07.2023 for filing of rejoinder. However, on this date in view of request received from Punjab RERA Bar Association the matter was adjourned due to heavy rain in the area to 10.08.2023 for filing rejoinder. On 10.08.2023 the complainants submitted their rejoinder and the matter was adjourned to 28.09.2023 for arguments. Thereafter from 28.09.2023

till 21.11.2024 the matter was adjourned on one pretext or the other. Finally, the matter was heard on 21.11.2024 and reserved for orders.

5. In the reply dated 13.05.2023 the respondent submitted that this dispute ought to be referred to the Arbitrator under Section 8 of the Arbitration and Conciliation Act 1996 (as amended vide Arbitration and Conciliation (Amendment Act, 2015) in terms of Section 50(C) of the agreement dated 11.04.2013 and prayed that the matter be referred to Arbitrator.

6. It is further contended that the prayer of refund of the deposited amount cannot be accepted as the money has been put in for the development of the allotted unit.

7. The learned Counsel for the respondent further contended that offer of possession in October 2017 (spontaneously it is October 2016) was subject to non-existence of any *force majeure* condition. There was recession in the real estate sector since the year 2015 and thereafter in March 2020 pandemic of Covid-19 hit badly the entire country and the entire country was under lockdown and lot of restrictions were imposed. The Government of India granted 6 months' grace period as also by the Real Estate Regulatory Authority for completion of the project to the developers. It is further submitted by the respondent that after the agreement dated 11.04.2013, the complainants and respondent entered into addendum to agreement on 11.04.2013 and the respondent agreed to pay Rs.41,029/- per month as 'assured returns' which were duly paid. Thus, the complainants have no right to raise the issue of delay.

8. It is further pleaded by the respondent that the complainants have suppressed the total sale price of the unit to be



Rs.43.00 lakhs and more than Rs.10.00 lakhs are yet to be paid by the them and the respondent has not demanded this amount from the complainants.

9. The learned Counsel for the respondent further stated that the claim of the complainants regarding non-payment of 'assured returns' after April 2021 has already been waived off by the complainants themselves through their letter dated 13.01.2021 and Affidavit-cum-Undertaking furnished by the complainants subsequently wherein it is clearly mentioned that the complainants agreed to waive off the 'assured returns' for the period from April 2021 to September 2021. However, the complainants have concealed this fact in their complaint filed under Section 31 of the Act of 2016. Regarding 'assured returns' after the period from September 2021, the learned Counsel for the respondent stated that it was agreed orally between the parties that it would be paid as soon as possible. However, the complainants have entered into unnecessary litigation about this issue.

10. The learned Counsel for the respondent further averred that the complainants were defaulters in making the installments and various reminders were issued and vide letter dated 11.11.2013 they were given last and final chance for payment of the outstanding dues. This affected the timely possession of the unit and this fact of delay in making payment of installments has not been mentioned by the complainants in their complaint.

11. It is further contended by the respondent that this complaint is barred by law of limitation. As per para 6 of the complaint

the cause of action arose in favour of the complainants on 11.10.2016 and the present complaint was instituted in the year 2022.

12. The learned Counsel for the respondent further contended that as per the declaration submitted by the respondent before this Authority under Section 4(2)(L)(C) of the Act of 2016, the date of completion of the project was 31.01.2021 as such possession becomes due on the date as given in the declaration. The learned Counsel for the respondent further referred Section 19(3) of the Act of 2016 to the effect that the allottee (complainants) shall be entitled to claim refund of the amount paid along with interest, if the promoter fails to comply or is unable to give possession of the apartment.

13. The learned Counsel for the respondent further contended that after sending notice dated 16.05.2022, the complainants filed the instant complaint immediately giving no breathing space to the respondent to submit its response.

14. It is the prayer of the respondent that the complaint be dismissed.

15. The learned Counsel for the complainants submitted rejoinder dated 10.07.2023 reiterating the contents of their complaint, denied and controverted the contents of the reply. It is further averred that possession was to be delivered by October 2016 however till date neither the construction is going on nor the commitment charges have been paid. Regarding the payment of installments, it is averred that the payments were to be made as per the payment schedule since it was a construction linked payment plan and all payments were made as per the demand of the respondent, but the respondent miserably failed to hand over possession of the unit. The complainants admitted



their consent about the waiver off commitment charges period from April 2021 to September 2021 but pleaded that thereafter no further payments were made. The respondent was further demanding amount even after receipt of payment of 80% which was not justified without any construction/development of the project. Despite lapse of considerable period the respondent has not executed Builder Buyer's Agreement till date. The complainants further averred that cause of action is subsisting in their favour as possession of the commercial space has not been offered to them till date. Thus, as per the provision of Section 18 of the Act of 2016, the complainants are entitled to seek refund along with interest thereon.

16. The undersigned heard both the counsels for the parties on the stipulated date and also gone through the record available on this file.

17. The learned Counsel for the complainants reiterated the contents of his complaint as well as rejoinder and argued on the lines of the complaint as well as rejoinder and prayed that the respondent be directed to refund their amount of Rs.33,60,859.84 along with interest thereon as the respondent failed to deliver the possession within the timeline mentioned in the allotment letter dated 11.04.2013.

18. The learned Counsel for the respondent has also argued on the lines mentioned in the reply and prayed that no relief can be granted to the complainants as they were themselves defaulters in making payment and have no right to raise the issue of delay as the respondent has paid them commitment charges.

19. The undersigned considered the contentions of both the parties.

20. Regarding the objection raised by the learned Counsel for respondent about the presence of arbitration clause, it is noted that the scope of Section 8 (1) of the Arbitration and Conciliation Act, and its relevance had been considered by the National Consumer Disputes Redressal Commission in its order dated 13.07.2017 in the case of "Aftab Singh Vs. EMAAR MGF Land Ltd. and Anr." In its order the National Commission has held as under in para 47 thereof :

*"...Hence, in view of the binding dictum of the Hon'ble Supreme Court in Ayyaswamy (supra), the matters/ disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which to a large extent, are similar to the disputes falling for resolution under the Consumer Act."*

21. It is a matter of record that the order of the National Commission had been maintained upto the level of the Hon'ble Supreme Court.

22. Further it may be noted that Section 79 of the Real Estate (Regulation and Development) Act, 2016 bars the jurisdiction of Civil Courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Finally, Section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The jurisdiction conferred by this provision cannot be fettered by the existence of an arbitration clause in any



agreement. As such this argument of the learned Counsel for respondent is devoid of merits.

23. Regarding the objection of the respondent that due to *force majeure* condition there was delay in handing over possession. However, it is noted that the impact of the Covid-19 was with effect from March 2020 onwards and in this case possession was to be delivered in October 2016. Thus, this objection has no force and accordingly is rejected.

24. Further the argument of respondent that only the Courts situated at Delhi and Chandigarh has the jurisdiction to adjudicate upon the disputes as per Clause 50(c) of the allotment letter is also without any substance. It is a matter of record that the project "International Trade Tower" is situated in the State of Punjab and the allotment letter issued to the complainants by the respondent is for a real estate project situated at Village Mullanpur, District SAS Nagar (Mohali). This Authority thus has the necessary jurisdiction to entertain and decide the present complaint under the Act of 2016.

25. The argument of the learned Counsel for the respondent regarding concealment of cost of the unit to be Rs.43.00 lakhs and outstanding of Rs.10.00 lakhs against the complainants, is itself answered by Annexure-A (Details of Unit) annexed with the allotment letter dated 11.04.2013 issued by the respondent itself wherein the cost of the unit is mentioned. Regarding the outstanding payment of Rs.10.00 lakhs no such document has been placed on file by the respondent to corroborate his argument.

26. The argument of the learned Counsel for the respondent regarding waiver of 'assured returns' for the period from April 2021 to September 2021 by the complainants themselves is corroborated by documentary evidence i.e letter dated 13.01.2021 coupled with sworn affidavit-cum-undertaking dated 03.09.2021 executed by both the complainants duly notarized. However, in any case, the amount paid towards 'assured returns' till date is ordered to be set off from the due amount to the complainants if the complaint of the complainants is allowed. Regarding the payment of 'assured returns' after September 2021, no documentary proof regarding release of further payment on this account has been submitted by the respondent thus it is held that the complainants are entitled to 'assured returns'.

27. Regarding issuance of reminders to the complainants for payment of outstanding installments, the respondent has not placed on file details about the period of delay and violation of any term mentioned in the agreement/addendum in making payment of the installments. Thus, without any proof no conclusion can be drawn about this lapse as claimed by the respondent.

28. Regarding the objection raised by the learned Counsel for the respondent about the delay in filing the complainant in the year 2022, it is noted that as per allotment letter dated 11.04.2013 the possession of the commercial space/office was to be delivered within 36 months + 6 months grace period i.e by 10.10.2016, however till date possession of the said commercial space/ office has not been handed over to the complainants, thus cause of action is still subsisting and continuing in favour of the complainants. Even otherwise there is no limitation under the Act of 2016 as this Act of 2016 is a special Act.



29. The further argument that the date of completion mentioned at the time of submission of declaration under Section 4(2)(L)(c) of the Act of 2016 should be taken into consideration which was 31.01.2021. It is noted that no doubt Section 19(3) of the Act of 2016 does lay emphasis on the declaration given under Section 4 of the Act yet it has to be noted that the unqualified right of an allottee to seek refund in case of a delay in delivery of possession as per the terms of the agreement has been upheld by the Hon'ble Supreme Court of India in many cases, the most notable being "*M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and Ors.*" (Civil Appeal No.6745-6749 of 2021). Further, by now the law is settled upto the Hon'ble Supreme Court e.g. (in "*Imperia Structures Ltd. v. Anil Patni and Anr*" - Civil Appeal 3581-3590 of 2020) **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).

30. It is also noted that the Hon'ble Supreme Court in the matter of "*M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and Ors.*" (Civil Appeal No.6745-6749 of 2021), while interpreting Section 18 of the Act, in "*Imperia Structures Ltd. Vs. Anil Patni and Another*" has 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 of the judgement dated 11.11.2021 being later than the referred judgement of Hon'ble Apex



Court in the case of DLF Home Panchkula Pvt. Ltd. (Supra) dated 10.05.2019 the Hon'ble Supreme Court 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."*

31. Further the argument of respondent that only the Courts situated at Delhi and Chandigarh has the jurisdiction to adjudicate upon the disputes as per Clause 50(c) of the allotment letter is also without any substance. It is a matter of record that the project "International Trade Tower" is situated in the State of Punjab and the allotment letter and agreement issued to the complainants and respondent is for a real estate project situated at Village Mullanpur, District SAS Nagar (Mohali). This Authority thus has the necessary jurisdiction to entertain and decide the present complaint under the Act of 2016.



32. Regarding the objection of the respondent that the complainants did not allow them breathing time to respond to their letter dated 16.05.2022, it is noted that in the last concluding para of the said letter, the complainants have clearly mentioned "*..Lastly, left with no other resort, we vide this present communication ask you to do the needful well within 15 days from the date of receipt of this notice, otherwise, we will be forced to approach the Hon'ble RERA Authority, Punjab seeking redressal of our grievances.*" Thus, from the above it is clear that a clear cut 15 days' time was granted to the respondent to pay the commitment charges. However, receiving no response, the complainants were within their right to institute the present complaint, which they did without any further delay.

33. From the above discussion, it is clearly established on record that the respondent was lagging behind in the schedule of delivery of possession of the commercial space/office which was to be delivered by 10.10.2016, despite making payment of Rs.33,60,859.84. Thus, the complainants were within their right to seek refund along with interest thereon from the respondent.

34. Thus, it is held that the complainants are entitled for refund of their deposited amount of Rs.33,60,859.84 with respondent along with interest in view of Section 18(1) of the Act, the relevant portion of which is reproduced below:

"18. (1) ..

(a) ...

**(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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)***

...."

35. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed to refund the amount of Rs.33,60,859.84 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 Rules of 2017 from the date of its deposit till the date of actual refund.

36. It is also made clear that whatever monthly return @ Rs.41,029/- paid by the respondent to the complainant as commitment charges/ assured returns be set off from the due amount to the complainants in this complaint. It is further made clear that no interest is to be claimed by the respondent from the complainant towards these charges.

37. It is also further directed that the resultant refund along with interest should be made by the respondent to the complainants within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 2017 from the date of receipt of this order and submit a compliance report accordingly. The complainant is also directed to intimate the Authority of the receipt of the refund and interest as mentioned above.

38. It may be noteworthy that in case compliance report is not submitted after the expiry of above stated period and further any




failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

39. The said complainants shall have the charge on the allotted commercial space/office space till the said amount is paid and order is complied with. The complainants/allottees are directed to execute a cancellation deed on receipt of full payment from the respondent promoter thereafter.

40. As far as the claim of litigation cost of Rs.1,10,000/- is concerned, the complainants have not raised this issue during the course of arguments, hence being not adjudicated upon.

Announced

  
(Binod Kumar Singh)  
Member, RERA, Punjab

RERA, Punjab