

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY,
PUNJAB**

Complaint No.GC No.0249 of 2021

Date of Institution : 09.06.2021

Date of Decision: 24.06.2025

AERO Homes Residents Welfare Association, through its President AERO
Homes, Gazipur, Gazipur Road, unimag SAS Nagar, Mohali, Pin Code 140103

....Complainant

Versus

1. M/s N.H.Matcon
2. Mr. Nitin Bansal, Partner
3. Mr. Sunny Bansal, Partner

All residents of Houe No.1704, Sector 21, Panchkula, Haryana, Pin Code
134112

4. The Executive Officer, Municipal Council, Zirakpur, SAS Nagar
(Impleaded vide interim order dated 31.05.2023)

....Respondents

Present: Shri Kshitij Sharma, Advocate for the complainant
Ms. Manju Goyal, Advocate for respondents no.1 to 3
Shri Rakesh Verma, Advocate for MC, Zirakpur/respondent no.4

ORDER

This complaint in Form 'M' was instituted on 09.06.2021 by the complainant 'AERO Homes Resident Welfare Association' 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 respondents seeking following directions to them:-

- i. To update the entire relevant information quarterly, as per Section 11 (1) (a) of the Act of 2016;

- ii. To Secure the Completion Certificate, Occupancy Certificate and hand over all documents to the allottees/association, as per Section 11 (4) (b) and Section 17 of the Act of 2016;
- iii. To take necessary steps, including paying outgoings towards mortgages etc. u/s 11(4)(g)(h) of the Act of 2016, issuing NOCs and consequently, to carry out the conveyance deeds, in favour of the allottees for their corresponding apartment number;
- iv. To carry out the transfer of the common areas in favour of the Residents Welfare Association as per Section 11 (4) (f) and Section 17 of the Act of 2016;
- v. To refund the amount of Rs.2.00 Crore approx. with interest to the Association incurred by the Association for maintaining the common areas, as per Section 11 (4) (d) of the Act of 2016;
- vi. To cancel the case of registration of the Promoter dated 28.12.2020 or issue him appropriate directions, as the promoter has admittedly been indulged in unfair trade practices repeatedly, and violated various provisions of the Act of 2016, in light of Section 7 of the Act of 2016, read with Rule 5 of the Rules of 2017.
- vii. To consult the Government, in case of cancellation of the Registration of the Promoter, to take action, and to carry out the remaining development works in accordance with the sanctioned building layout plans and project specifications;
- viii. To further direct the respondents to get the conveyance deeds executed in favour of the allottees/association;
- ix. To appoint a technical expert to verify compliance of the building sanctioned plans and project specifications by the Promoter; and
- x. To direct that all remedial measures, including fresh construction/repairs/demolition done either by the Promoter or

the concerned department within a time bound manner as per report and table at Annexure C-3.

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rules of 2017 are reproduced as under:

"31. Filing of complaints with the Authority or the Adjudicating Officer.-- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".

M **"Rule 36. Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]--** (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".

3. The brief facts of the complaint mentioned by the complainant association are summarized below:-

3.1 The respondent/promoter is a partnership firm;

- 3.2 The complainant 'Aero Homes Residents Welfare Association', is registered as per certificate dated 10.03.2017 (Annexure C-9).
- 3.3 The respondent/promoter has received registration dated 28.12.2020 (Annexure C-7) and has failed to discharge its obligations and violated;
- 3.4 The complainant Association while relying upon Sections 11, 12, 14 and 17 of the Act of 2016 pointed out the shortcomings in the functions and duties of the promoter.
- 3.5 It is alleged that the respondent/promoter falsely projected that the project/apartments were free of all encumbrances whereas the respondent/promoter had taken Rs.27.55 Crores from Punjab National Bank, LCB, Sector 17, Chandigarh.
- 3.6 On these false assurances, the allottees invested their money, and also secured loan to purchase the apartments in the project of the respondent/promoter for which even the respondent/promoter gave permission to mortgage (Annexure C-2).
- 3.7 It is further alleged that the project has not been constructed as per the approved site/layout plans and their specifications and also that the quality of the construction and the material used is very poor, and not as per standards. The details of some of the visible shortcomings are mentioned in the table at Annexure C-3 and photographs Annexure C-4, as such Architect's Certificate dated 10.11.2018 (Annexure C-5), submitted by respondent/promoter for registration is false.
- 3.8 The respondent/promoter further concealed the fact of availing loan from Bank and sold encumbered apartments to the allottees and even also took loans against the project after entering into

agreement to sell. The concerned Bank also did not act as per RBI circular, dated 27.08.2009 (Annexure C-8).

3.9 Despite making entire amounts and taken over the physical possession by the allottees no conveyance deeds have been executed either of the apartments or the common areas by the respondent/promoter and relied upon report of the Chartered Accountant dated 21.11.2018 (Annexure C-6) filed for registration of the project.

3.10 It is further alleged that respondent/promoter has neither obtained Completion Certificate, Occupancy Certificate nor handed over these documents to the allottees/Association including the plans. Respondent/promoter has also illegally sold the rooftops.

3.11 It is further alleged that respondent/promoter never maintained the essential services of the project. Respondent/promoter absconded in September 2016 after taking money from allottees, the Promoter leaving them in dark and without Power/Water as PSPCL disconnected the Electricity Connection due to outstanding of Electricity Bills of more than Rs.8.00 lakhs. The complainant Association has been maintaining the common facilities, essential services at their own level for which the complainant Association has incurred an amount of approximately Rs.2.00 Crores.

3.12 The complainant prayed accordingly as per the reliefs mentioned in above para no.1.

4. Notice was initially issued to respondents no.1 to 3 to submit their reply. Reply dated 17.02.2022 was submitted on behalf of respondents no.1 to 3 taking preliminary objections also which are summarized below:-

- 4.1 The complainant has no *locus standi* to file the present complaint and has been filed in order to abuse the process of law.
- 4.2 This complaint is without any cause of action as the complainant has taken possession of the flat.
- 4.3 The complainant has concealed material facts from this Authority. It is pointed out that Point 7 of the complaint – heading – '*Complaint not pending with any other court, etc or has not been decided by any other court/Authority etc.*' The complainant has filed two cases bearing Civil Writ Petition No.27615 of 2018 and CRM-M-23840 of 2018 and both these cases were withdrawn by the complainant. Further, the complainant has also concealed that FIR No.0018 dated 13.01.2018 was lodged against the respondent at police station Zirakpur, District SAS Nagar resultantly the Director Shri Nitin Bansal remained confined for four months in Patiala Jail and thereafter granted regular bail by the Hon'ble High Court of Punjab and Haryana. It is further submitted that the President of the complainant association namely Shri Parmod Kumar Sharma has already got favourable order on 26.11.2018 from the learned State Consumer Disputes Redressal Commission, Punjab in Complaint No.399 of 2018. It is further submitted that there was other 50 allottees who had approached the said Commission on the same facts.
- 4.4 It is further alleged that the complainant association had been collecting maintenance from its residents and once the association had been formed it is the duty of the complainant association to maintain the project. It is further stated that the complainant association was constituted in 2015 as per their understanding and registered on 2017 and account with UCO bank is being

maintained by this association. The association be asked to place on record statement of account of this bank to prove the date of operation of the bank account by them.

- 4.5 The respondents further objected to the present complaint being filed without any resolution and authorisation thereto to the President of the complainant Association.

On parawise reply to the complaint, it is further submitted by the respondents no.1 to 3 that :

- 4.6 Regarding paras 4 of the complaint, the contents mentioned therein have been denied by the respondents. It is submitted that after completing the work of 4 Towers out of 6 Towers, they applied for Partial Completion Certificate (PCC) on 18.12.2014. However, because of the complaint, same was not granted to the respondents. It is further alleged that whenever the inspection of the site was going to be conducted by the competent authorities, the complainant association stopped the concerned authorities and insisted them not to issue Occupancy Certificate.

- 4.7 Regarding alleged violation of Section 12 of the Act of 2016 claimed by the complainant association, it is stated that this relates to advertisement or prospectus, however they failed to adduce any evidence in this respect. The respondents admitted taking of loan from Punjab and National Bank but only for construction purposes and no loan has been taken on the flats of the allottees.

- 4.8 It is further submitted that the respondents have filed Civil Writ Petition No.9033 of 2019 titled 'N.H.Matcon Versus

Punjab National Bank and others" in the Hon'ble High Court of Punjab and Haryana for settlement wherein 'Notice of Motion' was issued. Regarding the alleged violations under Sections 4(a),4(b) and Section 14 of the Act of 2016, the respondents stressed that the complainant association be asked to prove their contentions.

4.9 Regarding the shortcomings pointed out by the complainant association in Annexure C-4, the respondents objected that there is no date on this Annexure or the date is illegible. The complainant has not mentioned particular date on which these photographs were clicked. It is the Authority to verify the contents of the Architect's Certificate and facts and thereafter on satisfaction grant registration certificate to the respondents.

4.10. It is further contended by the respondents that there are Rs.11.00 crores outstanding against the allottees, and without payment of this amount, conveyance deed cannot be executed in their favour and they have been asked to pay at the time of execution of the conveyance deed(s).

4.11 The allottees have taken possession after duly signing the possession letter issued to them.

4.12 Regarding the objection raised by the complainant association about selling of rooftops, it is stated that the rooftop rights have been given to those allottees who have purchased the last flat of the Tower and there is no sale of rooftops as alleged by the complainant association.

4.13 The respondents denied the averment of the complainant association that they are maintaining the project at their own level as they are collecting the maintenance charges from its residents and maintaining the project since 2015.

4.14 It is the prayer of respondents no.1 to 3 that this complaint be dismissed.

5. Rejoinder dated 17.03.2022 has been filed by the complainant association to the reply dated 17.02.2022 submitted by respondents no.1 to 3. While denying the preliminary objections raised by the respondents no.1 to 3, it is added that possession has not been delivered to the complainant association/ its members in accordance with the provisions of the Act of 2016. It is stressed that the promoter is duty bound to obtain Completion/Occupancy Certificate and also to execute conveyance deed. It is further emphasized that since the respondents abandoned the project and also failed to perform its duty, the complainant association has no choice but to collect maintenance charges from the allottees and maintain the society. Complainant association admitted filing of CWP No.27615 of 2018. They filed the present complaint in view of order dated 11.03.2019 of the Hon'ble High Court of Punjab and Haryana. Complainant association also admitted filing of CRM-M-23840 of 2018 which was withdrawn. The complainant association has denied that they have not disclosed about registration of First Information Report. It is stressed that vide email dated 09.01.2021 (Annexure C-12) they sent a detailed note containing a table of facts and this fact has been mentioned therein. Complainant association further submitted that since the respondents failed to maintain the society, they had to collect maintenance charges and maintain the society, which otherwise is the duty of the respondent/promoter. complainant association admitted handing over physical possession by respondents but added that the possession is worthless as no ownership

documents have been provided for common areas. Complainant association further denied that they resisted the inspection in any manner. In reply to the denial of the respondents about availing loan, complainant association stated that there is an entry dated 29.05.2014 of loan of Rs.27.55 crores in the revenue record which is further corroborated by the visit of the bank officials on 29.07.2016 when a notice was pasted on the gate of the society stating that the respondent/promoter failed to repay the loan. Complainant association further contended that the bank officials along with police personnel visited the society on 15.09.2016 and wanted to take possession of the flats forcibly. Regarding filing of CWP No.9033 of 2019 to settle the bank dues is a matter of record and the right of the allottees is over and above the right of the bank. Complainant association further added that the Hon'ble Supreme Court has settled that the rights of allottee is paramount as their interest has been treated as superior in relation to right of banks. Complainant association mentioned the date of photographs as 28.05.2021 and stated that the Architect Certificate is incorrect. Complainant association also made a prayer to appoint of an expert to ascertain the state of construction of the colony. The complainant denied that there are any due towards the respondents. The respondent/promoter has attached a list in the proceedings in CWP No.9033 of 2019 before Hon'ble High Court of Punjab and Haryana about no outstanding balance against the allottees. It is also contended that roof falls within the common area and is to be transferred to complainant association. The admission by respondent/promoter that rights have been purchased by the purchaser is itself shows the violation of the Act of 2016 and he be asked to provide the details of such purchasers of last flat of the Tower.

6. Perusal of the interim order dated 31.05.2023 passed by the Full Bench of this Authority would reveal that a report from the Executive Officer, Municipal Council, Zirakpur was sought to the following queries:-

- '1. *Partial Occupancy Certificate/ Partial Completion Certificate has been applied for, by respondent no.1 before the Competent Authority way back in December, 2013 (Ref. Annexure R-5 of the reply) but the same could not be obtained from the Competent Authority.*
2. *Secondly, the conveyance is not taking place as the land of the respondents is hypothecated with various financial institutions.'*

6.1 The operative part of the order dated 31.05.2023 is reproduce below:-

"We have considered the above submissions made by both the parties and before proceeding further, it is felt necessary that a detailed report from Executive Officer, Municipal Council, Zirakpur is required explaining as to why partial occupancy certificate/partial completion certificate had not been issued to respondent despite the fact that the respondents had applied for the same way back in the December, 2013 and what are the facts & circumstances behind the said delay.

Accordingly, Registry of this Authority is directed to issue notice U/s. 35 of the Real Estate (Regulation and Development) Act, 2016 to the Estate Officer, Municipal Council, Zirakpur to file a detailed reply on the above queries so raised and appear through an authorised representative who is well verse with the facts and circumstance of the project or their Counsel on the next date of hearing to make the picture more clear.

Next date of hearing 12.07.2023 at 10.30 a.m. for further proceedings.

Sd/-

(Ajay Pal Singh)
Member

Sd/-

(Satya Gopal)
Chairperson

Sd/-

(Rakesh Kumar Goyal)
Member"

7. In compliance of above order, Shri Rakesh Verma, Advocate appeared on 12.07.2023 for the Executive Officer, Municipal Council,

Zirakpur/Respondent no.4 and sought time to file a detailed reply. During the course of the proceedings of this matter, a letter dated 19.09.2023 written to the then Chairperson, RERA, Punjab mentioning the facts of the project of the respondents no.1 to 3 was received in this Authority vide Diary No.6130 on 20.09.2023. Vide letter No.979 dated 15.05.2018 addressed to respondent 'M/s N.M.Matcon', the Executive Officer, Municipal Council, Zirakpur directed the respondent not to hand over possession without completion certificate and also asked it to settle the complaint as well as to submit necessary documents relating to project required for issuance of Completion Certificate failing which necessary action would be taken. However, on the date of this letter i.e 19.09.2023, there was no response from the respondent M/s N.H.Matcon and accordingly partial completion/partial occupancy certificate was not issued to them.

8. Arguments were heard by the full Bench of the Authority on the stipulated date of hearing.

9. While arguing counsel for the complainant association reiterated the contents of complaint as well as rejoinder. ^{They have} ~~He has~~ also filed written arguments pressing only the following prayers, as he has given up the remaining prayers:

9.1 To direct respondent/promoter to secure completion certificate and hand over all the documents to the allottees/association as per Section 11(4)(b) and Section 17 of the Act of 2016.

9.2 To direct respondent/promoter to pay the outgoings towards mortgages as per Section 11(4)(g)(h) of the Act of 2016, issue NOCs and carry out conveyance deeds of the apart and common area to association.

9.3 If warranted cancel the registration of the promoter because of repeated violations of the Act of 2016 as per Section 7 of the Act of 2015 read with Rule 5.

10. It is argued by respondents no.1 to 3 that after completing the work of 4 Towers out of 6 Towers, they applied for Partial Completion Certificate (PCC) on 18.12.2014, however, due to complaint and resistance by complainant association on inspection of the site Occupancy Certificate was not issued. It is contended that still there are dues of Rs.11.00 crores outstanding against the allottees, and without this payment conveyance deed cannot be executed in favour of allottee(s). It is further argued that the allottees have taken possession after signing possession letter issued to all of them. Regarding maintaining the society, these respondents stated that complainant association is collecting maintenance charges from its residents and maintaining the project since 2015 and prayed that this complaint be dismissed.

11. We have considered the rival contentions of all the parties and have also gone through the available record.

12. The prayers of complainant association are being dealt below:

To direct respondent/promoter to secure completion certificate and hand over all the documents to the allottees/association as per Section 11(4)(b) and Section 17 of the Act of 2016:

12.1 It is the case of respondents no.1 to 3 that they have applied for issuance of Partially Occupancy Certificate on 18.12.2013 (Annexure R-5) addressed to the Executive Officer, Municipal Council, Zirakpur. However, till today it was not granted it is argued by Counsel for these respondents.

12.2 It is noteworthy that vide interim order dated 31.05.2023, this Authority sought following information under Section 35 of the Act of 2016 from Municipal Council, Zirakpur to file a detailed reply to the following queries:-

'Partial Occupancy Certificate/ Partial Completion Certificate has been applied for, by respondent no.1 before the Competent Authority way back in December, 2013 (Ref. Annexure R-5 of the reply) but the same could not be obtained from the Competent Authority.

2. *Secondly, the conveyance is not taking place as the land of the respondents is hypothecated with various financial institutions.'*

12.3 Shri Rakesh Verma, Advocate appeared for MC Zirakpur/Respondent no.4 and following response was received from MC, Zirakpur in this Authority vide Diary No.6130 on 20.09.2023.

"Vide letter No.979 dated 15.05.2018 addressed to respondent 'M/s N.M.Matcon', the Executive Officer, Municipal Council, Zirakpur directed the respondent not to hand over possession without completion certificate and also asked it to settle the complaint as well as to submit necessary documents relating to project required for issuance of Completion Certificate failing which necessary action would be taken. However, on the date of this letter i.e 19.09.2023, there was no response from the respondent M/s N.H.Matcon and accordingly partial completion/partial occupancy certificate was not issued to them".

12.4 As per Section 11(4)(b) of the Act of 2016, it is the duty of the promoter to obtain the completion/occupancy certificate from the relevant authority and make it available to the allottees

individually or association of allottees. From the above, it is established on record that respondents no.1 to 3 failed to further pursue their case for issuance of completion/occupancy certificate.

Project Registration File bearing No.PBRERA-SAS79-PR0679 was obtained from the Registration Branch. Perusal of the same revealed that the respondents have not submitted any completion/occupancy certificate on this registration file till date.

Thus, it is held that these respondents have violated the provision of Section 11(4)(b) of the Act of 2016.

13.

To direct respondent/promoter to pay the outgoings towards mortgages as per Section 11(4)(g)(h) of the Act of 2016, issue NOCs and carry out conveyance deeds of the apart and common area to association:

13.1 The alleged violation of Section 11(4)(g) of the Act of 2016 to pay all outgoings until he (promoter) transfers the physical possession of real estate project, there is no documentary proof placed on file by complainant association about the list of pending amount to be paid to any competent authorities by the respondent in this regard or by the respondents themselves that there is no outstanding against them as claimed by the complainant association.

13.2 As per Section 11(4)(f) of the Act, it is the case of the complainant association that the respondents have not executed conveyance deed in favour of the allottee. It is the case of the complainant association that they are in possession of the flat allotted to them but possession was not in accordance with the provisions of the Act as the

respondents have not obtained the completion/ occupancy certificate.

It is noted that this Authority has held in a case titled '**Nupur Hingad and anr. Vs. Emaar MGF Land Limited**' (GC No.1487 of 2019) that *once a allottee obtains possession he cannot be subsequently allowed to contend that the possession was not lawful since CC/OC had not been obtained-rather the allottee would be estopped from doing so.*

However, it is the case of the respondents in para 4 of parawise reply that there is huge amount of Rs.11.00 crores outstanding against the allottees and they were asked to make the payment at the time of getting the conveyance deed executed.

On the other hand, complainant association has relied upon para no.4 (Page-7) of the rejoinder to the para wise reply wherein it is mentioned that *"Moreover, the promoter/builder has attached a list in the proceeding i.e. CWP No.9033 of 2019 before the Hon'ble High Court of Punjab and Haryana, about no outstanding balance towards the allottees..."*.

However, it is noteworthy that neither the complainant association has placed on record the said list in the proceeding of CWP No.9033 of 2019 nor the respondents have placed on record any list showing the amount outstanding against each allottee, to be paid at the time of execution of the conveyance deed. It is unimaginable that any builder will hand over possession of the apartment/unit/plot without receiving the full payment from

the allottee. Complainant association has not placed on record any allotment letter or agreement for sale to show the terms and conditions of payment and possession thereof. However, as per proforma of agreement for sale to be signed with the allottee including payment plan attached as Annexure-A, Plan Down Payment/Construction Linked/Time Bound it is clearly mentioned that -at the time of notice of possession 5%. Thus, it is assumed, unless otherwise proved that the allottee before taking possession of the allotted flat had paid the total sale consideration to the seller(respondent/promoter).

14.

If warranted cancel the registration of the promoter because of repeated violations of the Act of 2016 as per Section 7 of the Act of 2015 read with Rule 5:

14.1 The contention of complainant association is to revoke the registration of the project as the respondents have indulged in unfair trade practice and violated various provisions of the Act of 2016. However, considering the vulnerability of the matter, complainant association only added that 'if warranted cancel the registration of the promoter. It is noted that vide his arguments, complainant association has dropped various violations allegedly committed by the respondents, and only pressed for (i) to direct the respondents to secure completion certificate and hand over documents and (ii) to pay outgoings towards mortgages only. The outcome of these two reliefs discussed above has no bearing on this issue. Accordingly, this issue is disposed off.

15. Keeping in view the relief prayed for in the written arguments by complainant association this complaint is partly allowed and the respondent is directed

15.1 To complete the formalities in obtaining the completion/occupancy certificate before the competent authority and thereafter to execute the conveyance deed in favour of each allottee who are in possession of the allotted flat in the project "Aero homes".

15.2 Since 'Aero Homes Residents Welfare Association' has already been formed vide certificate No.DIC/S.A.S. Nagar/Society/6236 of 2016-17 dated 10.03.2017, respondents to comply with Section 17 of the Act of 2016 i.e 'The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees...' and hand over necessary documents thereof within three months.

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



(Binod Kumar Singh)
Member



(Rakesh Kumar Goyal)
Chairman



(Arunvir Vashista)
Member