

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

Complaint No. GC No.0102 of 2023

Date of Institution : 11.04.2023

Date of Decision: 16.01.2025

1. Gurnoor Singh
2. Gurjit Singh

Both residents of House No.1681, Phase 3B2, SAS Nagar, Mohali,
Punjab - 10059

...Complainants

Versus

M/S WTC NOIDA Development Company Pvt. Ltd. through its Director
Shri Sherif Muin Khan, 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 Gurnoor Singh, complainant no.1/Advocate in person
and also as an Advocate for complainant no.2
Shri Dixit Garg, Advocate for respondent

ORDER


This complaint was instituted on 11.04.2023 in Form 'M' by the complainants namely Gurnoor Singh and Gurpreet Singh, in their 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-M/S WTC Noida Development Company Pvt. Ltd. seeking possession of Unit No.301, Tower-A, in the project "WTC Chandigarh (Offices and Retail Outlets)" (PBRERA-SAS81-PC0074) being developed by the respondent at WTC Towers, Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab along with

interest @ 10% on the amount of Basic Settled Price (BSP) paid to the respondent from 01.05.2021 till the date of possession.

2. The brief facts of the complaint submitted by the complainants are that:-

- 2.1 The complainants were allotted Unit No.301, Tower A, having built up area of 980 Sq ft.
- 2.2 An Agreement was entered into between the complainants and the respondent and notarized on 16.09.2020.
- 2.3 The respondent gave written commitment that the date of completion of project as per RERA registration was 30.12.2022.
- 2.4 The project was running out of completion schedule and as per Annexure C-1003 attached with the complaint-written commitment dated 18.09.2020 it is stated that though the date of completion of the project is 30.12.2022, the complainants will get interest on amount of Basic Settled Price w.e.f. 01.05.2021 till the date of offer of possession at the rate prescribed in the Rules of 2017.
- 2.5 The respondent did not pay any interest from 01.05.2021 to 30.01.2022 which reflected its *mala fide* intention.

- 2.6 Till today, the respondent has paid interest only from 01.02.2022 to 31.10.2022 and thereafter has again stopped giving any interest till date.
- 2.7 The respondent failed to deliver actual physical possession and not paying any interest despite repeated requests made by the complainants.
- 2.8 The Unit is still under construction, which would further take more than one year for completion.
3. It is the prayer of the complainants to direct the respondent to deliver possession of the Unit and further to pay interest at 10% on the amount of BSP paid to the respondent from 01.05.2021 till the date of offer of possession and also to pay cost of litigation. The learned Counsel for the complainants attached annexure in support of their case including agreement, written commitment, payment ledger etc.
4. Upon notice, Shri R.S. Baweja, and Shri Rachil Kaushal, Advocates appeared for the respondent and submitted reply dated 03.10.2023 taking certain preliminary objections. It is submitted by the respondent that:-

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- 4.1 The instant complaint is not maintainable.
- 4.2 No cause of action accrues or ever accrued in favour of the complainants or against the Respondent.
- 4.3 The date of offer of possession as per Agreement dated 16.09.2020 was agreed to be governed by Serial No. 20 of the Schedule-A attached with the Agreement (Schedule-A, Sr.No.20 - Date of Completion of Project as per RERA

Registration as well as date of offer of possession of Unit by Promoter-31.12.2022), which was understood by both the parties.

- 4.4 This arrangement of both the parties was further understood from the wording of Clause 5 of the agreement dated 16.09.2020, which has been reproduced by the respondent:-

"5 TIME IS THE ESSENCE:-

The promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Real Estate Regulatory Authority and for handing over the unit to the allottee and the common areas to the association of allottees or the competent authority, as the case may be...."

- 4.5 Respondent further stated that at Serial No.27 of Schedule-A of the Agreement dated 16.09.2020 it is mentioned - "tentative" date of offering possession to the allottee was 31.12.2022.

- 4.6 Respondent had previously applied to this Authority for extension of completion of project to 30.06.2022, and again the Respondent has duly applied for further extension of the completion date to 30.06.2024, which application of extension is under consideration of this Authority.

- 4.7 Therefore, this Complaint is pre-mature and is liable to be dismissed.

- 4.8 Respondent has already paid interest on the deposited amount from February 2022 till December 2022,

amounting to Rs.4,98,880/- and there was no loss to the complainants.

4.9 It is submitted that it is the endeavour of the respondent to offer possession of the allotted unit as mentioned, however, due to lockdown owing to the outbreak of COVID-19 pandemic created a *force majeure* situation which was completely out of the control of the respondent. It is further submitted that now the construction work is in full swing and the respondent would be able to offer possession soon.

4.10 These preliminary objections go to the root of the maintainability of the instant complaint and may be decided at the first instance before proceeding further to decide the Complaint.

4.11 On merits, it is stated that the contents of the preliminary submissions may be read as part and parcel of the paras.

5. Later on, Shri Dixit Garg, advocate appeared on behalf of the respondent, replacing the earlier Counsels and submitted his Power of Attorney.

6. It is brought to the notice of the undersigned by the office of this Authority that the registration number of the project in question i.e. *WTC Chandigarh (Offices and Retail Outlets) - PBRERA-SAS81-PC0074* granted by this Authority has been revoked by this Authority vide order dated 15.05.2024. A copy of order dated 15.05.2024, also available on the web portal of this Authority, the relevant paras 25 and 26 of the said order are 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..."

7. Thus, it is clear from the above order dated 15.05.2024 that the project "WTC Chandigarh (Offices and Retail Outlets) bearing

registration no. PBRERA-SAS81-PC0074" in which the Unit bearing Unit no.301, allotted to the complainants was situated has already been revoked as such there was no application filed by the respondent for extension of the completion date was pending before this Authority.

8. Arguments were heard by the undersigned on the stipulated date.

9. Complainant no.1 argued that they were allotted Unit No.301, Tower A, having built up area of 980 Sq ft. by the respondent and an Agreement was entered into between the complainants and the respondent duly notarized on 16.09.2020 and the date of completion of project was given by the respondent as 30.12.2022. It was further argued that as per written commitment dated 18.09.2020 the document issued by the respondent that the complainants will get interest on amount of BSP w.e.f. 01.05.2021 till the date of offer of possession at the rate prescribed in the Rules of 2017. It is further argued that the respondent did not pay any interest from 01.05.2021 to 30.01.2022 but paid interest only from 01.02.2022 to 31.10.2022 and thereafter has again stopped paying any interest till date. As on date the respondent failed to deliver physical possession. Complainant no.1 prayed that the respondent be directed to deliver possession of the Unit allotted to the complainants and further to pay interest from 01.05.2021 till the date of offer of possession.

10. The learned Counsel for the respondent reiterated the contents of his reply. The learned Counsel for the respondent did not dispute about the allotment of the unit and execution of agreement between

the complainants and the respondent. The precise argument of the learned Counsel for the respondent was that they have filed representation before the Competent Authority of Greater Mohali Area Development Authority (GMADA) regarding difference of interest, i.e there is a difference of interest calculated by GMADA and calculated by the respondent, which is likely to be decided shortly and the respondent is sanguine of its success. It was further argued by him that in view of the pendency of the representation before GMADA, respondent is unable to apprise this Authority about the actual date of handing over of possession.

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

12. From the pleadings of the parties it is clear that there is no dispute between the parties about allotment of Unit No.301 having built up area of 980 Sq. Ft. in Tower-A in the commercial project named 'WTC Chandigarh (Offices and Retails)' being developed at WTC Towers, Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab; entering into an Agreement on 16.09.2020; as per Clause 20 of the Schedule-A attached with the agreement the date of delivery of possession of the unit was 31.12.2022; total fixed price of the unit being Rs.67,09,264. Till date possession of the above said Unit has not been handed over to the complainants.

13. It is noteworthy that the date of offer of possession promised to the complainants as per agreement was 30.12.2022 and the argument/averment of the respondent that the instant complaint is premature and liable to be dismissed is without any substance, as the

instant complaint was instituted by the complainants on 11.04.2023. The other contention of the Counsel for the respondent 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. However, as per the Schedule-A of the agreement, the date of possession declared to be 31.12.2022, which is much after the Covid-19 period and the present complaint was also filed thereafter.

14. The learned Counsel for the complainants stated that they have paid a sum of Rs.80,25,639.97 to the respondent so far regarding allotment of the Unit No.301 as per applicant ledger (Annexure 0002) maintained by the respondent attached with their complaint.

15. 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). The argument of the respondent that they have submitted application for extension which is under consideration has no legs to stand as vide order dated 15.05.2024 the registration of this project 'WTC Chandigarh (Offices and Retail Outlets)' bearing No.PBRERA-SAS81-PC0074 had already been revoked by this Authority. Thus, this argument is rejected.

16. As per provisions of the Act of 2016, 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)

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed (**emphasis supplied**).*

(2)

(3)"

17. As a result of the above discussion, this complaint is accepted and the respondent/WTC Noida Development Company Private limited, is accordingly hereby directed to pay 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 on the amount paid by the complainants w.e.f 01.01.2023 till the date of this order and the arrear of interest would be paid within two months from the date of receipt of this order.

18. The respondent is further directed to pay interest under Section 18(1) of the Act 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 on the amount paid by the complainants from the date of this order till the date of delivery of valid possession of the Unit No.301, Tower-A, situated in the project 'WTC Chandigarh (Offices and Retails)' being developed at WTC Towers, Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab. The respondent is directed to submit the compliance report accordingly.

19. The amount paid by the respondent to the complainants by way of interest amounting to Rs.4,98,880/- towards assured returns for the period from February 2022 till December 2022 is allowed to be set off against the interest so due, to avoid unjust enrichment of the complainants.

20. It may be noteworthy that in case compliance report is not submitted by the respondent 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 of 2016.

21. The complainants are also directed to submit report to this Authority that they have received the amount of interest as directed in this order.


22. Further, the complainants are bound to pay the outstanding amount, if any, before taking the possession of the Unit as per Section 19(10) of the Act of 2016 which reads as under:-

"(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be".

23. As far as the claim of litigation cost is concerned, the complainants have not raised this issue during the course of arguments, hence being not adjudicated upon.

24. File be consigned to the record room after due compliance.

Announced


(Binod Kumar Singh)
Member, RERA, Punjab