

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

Complaint No. GC No.0069 of 2022  
Date of Institution : 03.03.2022  
Date of Decision: 05.02.2025

Ashwani Middha, House No.2105, Urban Estate, Jind, Haryana-126102  
...Complainant

Versus

1. Barnala Builders, Opp McDonalds, NH-22, Chandigarh Ambala Highway, Zirakpur, SAS Nagar, Mohali, Punjab-140603
2. Satish Jindal, C/o Barnala Builders, Opp McDonalds, NH-22, Chandigarh Ambala Highway, Zirakpur, SAS Nagar, Mohali, Punjab-140603
3. Deepak Aggarwal, C/o Barnala Builders, Opp McDonalds, NH-22, Chandigarh Ambala Highway, Zirakpur, SAS Nagar, Mohali, Punjab-140603

....Respondents

Present: Shri Mohit Uppal, Advocate for the complainant  
Ms. Kirti Sandhu, Advocate for the respondents

**ORDER**

This complaint in Form 'M' was instituted on 03.03.2022 by the complainant Ashwani Middha in his 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, against the respondent M/s Barnala Builders and ors. seeking refund of Rs.19,74,621/- along with interest on the amount paid for the purchase of Shop in the project "Maya Garden Magnesia" (Regn No.PBRERA-SAS79-PC0022) being developed by the respondents.

2. It is the case of the complainant that on allurement by the respondents, he booked Shop No.3096, admeasuring Super Area 260 sq. ft. having carpet area 140.666 sq. ft. on 08.10.2019 in their project

"Maya Garden Magnesia", and the total cost of the shop was set at Rs.20,00,000/- besides other charges of Rs.1,04,000/- which were to be paid at the time of offer of possession. It was projected that Assured Return @1% per month shall be paid till the completion of whole project. One video clip of the project was shown to the complainant however no layout plan and floor plan was provided to him. It is further submitted that the respondents received Rs.19,74,621/- from him before entering into Agreement for Sale and without issuance of any Allotment Letter. It is further submitted that whenever he demanded for the agreement, he was told that he would be called to sign it. Later on, after taking all the cheques of the aforesaid amount, he was given the agreement along-with some letters to sign on 09.11.2019. However, he brought clauses which he felt as objectionable into the notice of respondents on which the complainant was not agreeable and acceptable to him and he sent an email dated 10.11.2019 in this context. The complainant, however, signed the agreement on 11.11.2019 as no heed was paid to his grievances. It is contended that after March 2020 onwards respondents stopped paying the assured returns as agreed upon. In lieu of assured returns from March 2020 to May 2020 and September 2020 to December 2020, the complainant was given credit notes against which objection was also raised. It is further stated that the complainant was issued two cheques of amount Rs.16,766/- towards assured returns for the months of May 2021 and June 2021 respectively. It is further averred by the complainant that however on presentation of cheque for the month of May 21 to its banker, the same could not be encashed as respondents had stopped the payment. Subsequently, the complainant sent legal notice in vain. The complainant received a letter of offer of possession dated 21.06.21

with a demand of Rs.2,65,759/-. The complainant visited the project on 22.7.21 and 28.9.21 and found that there were no basic amenities like, drinking water provided, toilets were not ready, lifts were not operational and construction was continuing on the 3<sup>rd</sup> floor where the Shop no. 3096 of the complainant located and project was not complete. The complainant noticed that in (prospective) his shop, there was a duct containing pipes and pillar inside the shop reducing the area of shop and even proper dimension was not provided. It is further contended that when the complainant asked for completion and occupancy certificate for whole project, respondents failed to show. It is further stated that the Shop is not as per promised assurances and is not viable for earning livelihood as one side of shop is wasted. Respondents were pointed about the nonviability of the shop due to aforesaid constructions of duct and pillar. The complainant submitted that he has been cheated by the illegal acts of the respondents. The complainant asked respondents to refund the entire amount along-with interest, but till date respondents have failed to do so, hence this complaint. It is the prayer of the complainant that the respondents be directed to refund the entire amount of Rs.19,74,621/- alongwith interest from the date of deposit till realization and also litigation cost amounting Rs.2,00,000/-.

3. It is further contended by the complainant that since the respondents have violated various provisions of the Act of 2016, necessary proceedings be initiated against the respondents. It was submitted that the respondent

- i. violated the provisions of Section 13(1) of the Act of 2016 as they have received more than 95% percent of the amount before the execution of the agreement for sale.

- ii. It is further contended that the agreement for sale dated 11.11.2019 was also not in accordance with the Act of 2016.
  - iii. As per Section 13(2) of the Act of 2016 the respondents have not attached schedule-B i.e. floor plan of shop.
  - iv. The respondents have never made available or shown sanctioned plans, layout of shop, floor plans, along-with specifications, approved by the competent authority etc.
  - v. The respondents have violated the provisions of Section 3(a), Section 11 and Section 19(1) of the Act of 2016.
4. In support of his case, the complainant relied upon various documents including copies of cheques, agreement for sale, credit notes, objection note, legal notice, and offer of possession.
5. Notice was issued to the respondents on 03.03.2022 for their appearance on 07.04.2022 and to file reply within fifteen days of receipt of notice. Shri Jatin Bansal, Advocate appeared for all the respondents and submitted memo of appearance and sought time to file reply. The matter was adjourned to 12.05.2022 for filing of reply with a direction to supply copy to the learned Counsel for the complainant. It is noted that instead of filing reply to the main complaint, the representative of respondent no.1 submitted an application for deletion of the names of respondents no.2 and 3 and a copy thereof was supplied to the representative of the complainant and the matter was adjourned to 31.05.2022 for filing reply on behalf of the respondents. On this date i.e 31.05.2022 reply to the application for deletion the names of respondents no.2 and 3 was filed by the complainant but no one was present on behalf of the respondents.

However, a request for adjournment was received from respondents through email. The matter was adjourned to 07.07.2022 for filing of reply to the complaint and for consideration on the application for deletion of names of respondents no.2 and 3. Perusal of the interim order dated 07.07.2022 revealed that reply was to be filed during the course of the that day along with Power of Attorney and the matter was adjourned to 26.07.2022 for filing of rejoinder and consideration on application for deletion the names of respondents. However, no rejoinder was filed on 26.07.2022 and on the request of the learned Counsel for the complainant the matter was adjourned to 25.08.2022 for filing of rejoinder. On 25.08.2022 it was stated by the representative of the complainant that no rejoinder was to be filed and the matter was adjourned to 15.11.2022 for arguments. On this date, however rejoinder was filed and copy thereof was supplied to the learned Counsel for the respondents and the matter was adjourned to 08.12.2022 for arguments. During the course of hearing from 08.12.2022 the matter was partly heard on 28.02.2023 and thereafter from 28.02.2023 till 21.11.2024 the matter was adjourned on the pretext that settlement was going on between the parties. However, later on, Shri Mohit Uppal, Advocate, a new counsel appeared for the complainant replacing the earlier Counsel and submitted his Power of Attorney. Arguments were heard on 21.11.2024 and the matter was reserved for orders. During the framing of order, it was observed that the case needs to be revisited in view of alleged discrepancy in the floor plan. Accordingly, the passing of final order was withheld and the respondent was directed to submit certified sanctioned building plan highlighting the shop no.3096 allotted to the complainant. The complainant and respondent were asked to appear on 05.02.2025 and

on the stipulated date the respondent did not bring the sanctioned plan but the complainant admitted that there is no change in whatever agreed upon in the agreement for sale and what he is getting from the promoter. Since it was admitted that there is no discrepancy in the floor plan this allegation raised by the complainant is dismissed.

6. In the reply filed on behalf of respondent no.1, it has been alleged that the complainant has wrongly mentioned in the present complaint that the respondents have failed to comply with the Buyer's Agreement and provisions of the Act of 2016 and has filed the present complaint with ulterior motive to earn unjust enrichments. The instant complaint is liable to be dis-missed on grounds of "misjoinder of the parties" as the complainant has wrongly and vexatiously impleaded respondent No.2 and respondent No.3 as a party. Respondent No.2 and respondent No.3 are the Managing Partners of Respondent No.1 and Respondent No.1 is the promoter and Builder with whom the complainant executed "agreement for sell" and reserves its right to file a detailed reply to the present complaint and in this regard placed reliance upon judgement of the Hon'ble Supreme Court titled "*Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and Ors. Etc.*", Criminal Appeal Nos. 1047 and 1048 of 2021, wherein the Hon'ble Apex Court has categorically held that the Chairman, Directors, and other key managerial personnel of a company cannot be automatically held liable qua any allegations/offences against the company unless specific allegations and averments against them are made with respect to their individual role. Thus, proceedings against them ought to be dropped and their names should be deleted. It is further contended that the complainant has not approached this

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Authority with clean hands and has concealed material facts and also pleaded false and misleading facts to deceive and defraud the process of law. The relief sought from this Authority is for refund of deposited money along with interest thereon. However, the complainant has withheld the fact that the respondent has already acquired the Partial Completion cum Occupancy Certificate (PCC/OC) on 07.06.2021 and only after acquiring the requisite occupancy certificate, the respondent has offered the possession of the shop to the complainant vide offer of possession letter dated 21.06.2021. This PCC/OC dated 07.06.2021 is with respect to Block 1, wherein the present shop in question is situated. The complainant was duly provided with the Occupancy Certificate with a request to take over the possession of the shop as per the terms and conditions of the Buyer's Agreement. Instead, the complainant filed the instant complaint in order to avoid his obligation to pay the pending dues towards the total sale consideration amount. It is further stated that the respondents have paid Rs.1,76,230/- with respect to investment benefits/returns as per the mutual understanding between the parties and also issued credit notes worth Rs.1,17,361/- totaling to Rs.2,93,591/-. However, this fact has been concealed by the complainant. The learned Counsel for the respondents referred Section 11 (4) (b) and Section 17 of the Act of 2016 whereby the promoter is liable to obtain occupancy certificate from the competent authority and hand over possession of the unit to the respective allottee within 3 months from the date of obtaining the said occupancy certificate. In this case the respondent obtained occupancy certificate on 07.06.2021 and offered possession of the shop to the complainant on 21.06.2021 and the complainant was bound to take the possession of the shop, as per Section 19(10) of the Act of 2016.

The learned Counsel for the respondents further relied upon the judgment of the Hon'ble Supreme Court in the matter of "IREO Grace Real Tech Pvt. Ltd. v. Abhishek Khanna & Ors.", Civil Appeal No. 5785 of 2019, wherein it was held that the allottees are bound to take possession of the unit if the possession stands offered by the promoter after obtaining occupancy certificate. The learned Counsel for the respondents also placed reliance upon Clause 7.3 of the Buyer's Agreement, which casts a mandatory obligation and duty upon the buyer/complainant to take the possession within a time bound manner, failing which he would be liable to pay the requisite maintenance charges from the date of offer of possession. As such, possession was offered to the complainant in a time bound manner. It is further stated that the present complaint is devoid of any merits and is liable to be dismissed and also placed reliance upon the judgement of this Authority in the case of "*Rakesh Rastogi vs. M/s Citi Centre Developers*", GC No. 1509 of 2019, wherein the complaint was dismissed on the grounds that the possession of the unit in question has been offered in a timely manner without any delay after obtaining the Occupancy Certificate. The learned Counsel for the respondents also referred the judgement of full bench of this Authority in the matter of "*Maj. Deepak Chauhan and Anr. v. ATS Estates Pvt. Ltd.*", GC No. 1425 of 2019, decided on 23.04.2021, wherein it was held that the claims for the valid possession of the unit is infructuous, as the possession of the unit has been held to be validly given after receipt of partial completion certificate. It is further submitted by the respondents that the present unit in question is complete in all aspects and the PCC/OC is a valid proof of the same and this Authority does not have the jurisdiction to go into the legality of the issuance of valid



occupancy certificate and quoted Section 2 (zf) of the Act of 2016 and Circular No. RERA/ENF-19 dated 09.07.2019 of this Authority to the effect that "occupancy certificate is issued for dwelling units falling with the portion for which partial completion certificate is issued after due field enquiry". As such, the issuance of the Partial Completion-cum Occupancy Certificate to the present respondents with respect to the Block wherein the unit of the present complainant is situated proves without any iota of doubt that the unit is ready in all aspects and fully operational and complete. Respondents also referred the judgement of this Authority in the matter of "*Pradeep Upadhyaya v. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.*", (File No. 102/M(SG) 1351 of 2019), wherein it is held that any submission regarding validity and legality of the Occupancy Certificate issued to any promoter is to be taken up with the Competent Authority who has issued such occupancy certificate. It is further stated by the respondents that the complainant is the defaulter by failing to pay the pending dues Rs.1,48,398/- which is excluding maintenance charges, holding charges, delayed interest period and other applicable penalties and also, after adjusting the credit notes for the total amount of Rs.1,17,361/- and relied upon Section 33 (h) of Buyer's Agreement specifically states that "*It will be the absolute duty of the allottee to deposit remaining cost of allotted unit along with all other dues and taxes within last week before completion of September 2022 or the time as specified in offer of possession letter, whichever is earlier.*" The learned Counsel for the respondents also referred Section 19(6) of the Act of 2016 and also Clause 7.3 of the Buyer's Agreement which clearly states that "*Failure of Allottee to take Possession of Commercial Unit/Plot- Upon receiving a written intimation from the Promoter as per Clause 7.2, the Allottee*

*shall take possession of the Commercial Unit/Plot from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the Commercial Unit/Plot to the allottee. In case the Allottee fails to take possession within the time provided in Clause 7.2, such Allottee shall continue to be liable to pay maintenance charges as applicable."* Thus, as per the provisions of Clause 33 (j) of the Buyer's Agreement the complainant is liable to pay holding charges of Rs.2,21,000/- at the time of filing the present reply which are further accruing. It is further submitted that it is the complainant who was in default, not only of the terms and conditions of the Agreement, but also of the specific provisions of the Act of 2016. It is further contended that the complainant is not a genuine buyer and merely entered into the agreement to avail the returns/interests. It is further submitted that the actual reason for delaying the payment of the pending dues and taking the possession of the unit was that under the terms and conditions of the agreement, the Allottee was bound to start the business in the allotted commercial unit within the prescribed time failing which the complainant would be liable to pay penalty to the respondents and in support of this plea relied upon Clause 33 (l) of the Agreement. The learned Counsel for the respondents also referred and reproduced Section 18 of the Act of 2016 which is not reproduced here for the sake of brevity. It is further submitted that the due date of the possession of the unit was September 2022 and as such, the present complainant does not have a remedy to seek refund under Section 18 of the Act of 2016 whereas the present complaint was prematurely filed on 03.02.2022. If the complainant is seeking refund of the deposited amount towards the unit, the same would be treated as cancellation of

the booking, and as per Clause 7.5 of the agreement, the respondent is entitled to deduct and forfeit 10% of the total sales consideration along with adjusting the amount already paid to the complainant towards the assured returns. It is further pleaded that the complainant has challenged the construction and development work done on the site. The averments raised by the complainant relate to agreement and the performance of obligations contained therein can only be decided under the provisions of the Specific Relief Act and the Indian Contract Act.

7. The learned Counsel for the respondents further stated that regarding the validity of agreement to sale as per the Act of 2016, involved complicated questions of fact and required evidence from both sides, and is purely to be dealt by a Civil Court. It is further contended that the transaction being continuous in nature, this Authority cannot put supervision to ensure the compliance of the terms and conditions of the agreement which is signed by the complainant and relied upon its Clause 33(w). It is further mentioned in the reply raising objection about the verification which has not been filled and there are no particulars or details pertaining to the person filing the present complaint. There is no deficiency in service or any unfair trade practice on the part of the respondents rather the complainant has failed to adhere to the terms and conditions of the Agreement.

8. On parawise reply to the complaint, the respondents reiterated and reproduced the contents of above preliminary submissions. It is stated that the Buyer's Agreement was handed over to the complainant on 09.11.2019 and without executing the same the complainant transferred additional amount to the respondents and

thereafter delayed the execution of the Agreement for Sale without any justification. If the terms and conditions of the Agreement were not acceptable to the Complainant he would have sought refund of his money. It is mentioned in the reply that the Agreement executed between the Complainant and the respondents was duly approved by the RERA Authority. The Complainant is now barred by the *principle of estoppel*. It is further submitted that the complainant accepted the assured returns. The respondents denied the contention of complainant that no assured returns were paid till offer of possession to the complainant. It is submitted that credit notes equivalent to the amount of Rs.1,17,361/- of assured returns were duly issued to the Complainant and adjusted towards the pending sales consideration. The learned Counsel for the respondents further denied that the present project in question is incomplete as more than 500 allottees had already taken possession of their respective units in the said project as per Annexure R-6. The learned Counsel for the respondents further denied pipes and pillars inside the shop have been introduced in amendment to the initial layout plans which were duly supplied to the complainant and accepted by him. Further, every similarly placed unit has presence of such pillars and there is no decrease in the carpet area of the complainant's unit. It is further added that the pillars and other structure is essential to support the building. The respondents denied that the unit is neither complete nor habitable condition. It is stated that partial completion-cum occupancy certificate has already been obtained by the respondents. The respondents further denied that any specifications, particulars and amenities are missing and have not been developed as most of the specifications mentioned therein, comes under the purview of common area facilities and the answering

respondent has time till September 2022 as per the permission granted by the RERA registration certificate, to complete such common area facilities and pendency of any common area facility (if any) does not automatically render the offer of possession as invalid. Respondents relied upon the judgement of full bench of this Authority in the matter of "*Maj. Deepak Chauhan and Anr. v. ATS Estates Pvt. Ltd.*", GC No. 1425 of 2019, decided on 23.04.2021, wherein in a similar matter directed the allottee to take possession of the unit and further held that allegations pertaining to pendency of the common area facilities are premature as the due for completion as per RERA Registration is yet to expire. Even otherwise non-completion of specifications is a separate issue and the complainant has a right to raise it through a separate complaint. The present complaint is for issuance of the refund along with the interest after offer of possession letter. The respondents placed reliance on judgements of this Authority in the matters of "*Mahima Sharma and Anr. v. Country Colonizers*", Adc No. 1780 of 2020; "*Alka Masta v. Sushma Buildtech Ltd.*", GCNo. 0318 of 2021; "*Sumit Arey v. Sushma Buildtech Ltd.*" GCNo. 0184 of 2021, and in the recent judgment passed by this Hon'ble Authority, in the matter of "*Sanjeev Gupta versus M/s Country Colonizers Pvt. Ltd.*", (AdCNo. 00402021 BFTR-AUTH 0129-2022), wherein it has been held that a complaint seeking refund would not be accepted if it is filed after a valid offer of possession has been made. Respondents also relied upon Recital (I), Clause 33(i) and 33(w) of the Agreement to Sell. It is further contended by the respondents that the complainant is liable to pay maintenance charges, holding charges, and pending dues along with interests thereupon and relied upon the judgement of this Authority in the matter of "*Nitin Pargal v. M/s Hero Realty Pvt. Ltd.*",

GC No. 0033 of 2021, wherein directions were issued to the allottee to take the possession of the unit along with payment of pending dues along with interest thereupon. There is no provision in RERA to seek refund prior to the due date of the possession and if the Complainant seeks to opt out of the project, this amounts to cancellation of the booking of the unit and Clause 7.5 of the Agreement would be applicable. It is the prayer of the respondents that the complaint be dismissed and complainant be directed to take possession of the unit; to pay the pending dues towards the total sales consideration along with interest thereupon; and to pay the maintenance charges and holding charges along with interest thereupon.

9. The learned Counsel for the complainant submitted rejoinder reiterating the contents of his complaint and controverting the contents of the reply.

10. The undersigned heard the arguments on the stipulated date.

11. The learned Counsel for the complainant while reiterating the contents of his complaint further argued that the complainant booked Shop No.3096, admeasuring Super Area 260 sq. ft. having carpet area 140.666 sq. ft. in the project "Maya Garden Magnesia", being developed by the respondents. It is further argued that out of the total cost of Rs.20,00,000/- the respondents received Rs.19,74,621/- before entering into Agreement for Sale and without issuance of any Allotment Letter. It is further argued that after March 2020 onwards respondents stopped paying the assured returns but in lieu of thereof the complainant was given credit notes from March 2020 to May 2020 and September 2020 to December 2020. The complainant was issued two cheques of amount Rs.16,766/- respectively towards assured returns

for the months of May 2021 and June 2021. However, cheque of May 2021 was dishonoured. Shop is not as per promised assurances and also not viable for earning livelihood. It is further argued by the complainant that there were no basic amenities like drinking water, toilets, lifts were not operational and construction was continuing on the 3<sup>rd</sup> floor where the Shop no. 3096 of the complainant located and project was not complete. It is further argued by the learned Counsel for the complainant that when the complainant asked for completion and occupancy certificate for whole project respondents failed to show any such document. The learned Counsel for the complainant further stated that the respondents have accepted more than 10% of the amount before entering into agreement for sale so necessary proceedings prescribed under the Act of 2016 may be initiated against them. It is the prayer of the complainant that respondents be directed to refund the entire amount of Rs.19,74,621/- along-with interest and also litigation cost amounting Rs.2,00,000/-.

12. On the other hand, the learned Counsel for the respondents argued that the prayer of the complainant seeking refund along with interest is not to be considered on the ground that as per clause 7.1 of the agreement for sale entered into between the parties on 11.11.2019, possession of the commercial space/office was to be delivered to the complainant on or before September 2022. It is further argued that the respondents after obtaining the Partial Completion Certificate/Occupancy Certificate (PCC/OC) on 07.06.2021 from the Competent Authority i.e. Municipal Council, Zirakpur, District SAS Nagar offered possession to the complainant vide possession letter dated 21.06.2021. However, the complainant did not come forward to take possession. It is further argued on behalf of the respondents that

the complainant has concealed the fact about obtaining of PCC/OC by the respondents on 07.06.2021 from this Authority. It is further stated that more than 500 allottees had already taken possession of their respective units. The learned Counsel for the respondents further argued that the instant complaint was pre-mature as the same was filed on 03.02.2022 whereas as per clause 7.1 of the agreement for sale dated 11.11.2019 possession was to be delivered on or before September 2022. The learned Counsel for the respondents further argued that the unit in question is complete in all respects and relied upon following judgements of this Authority quoted in para nos.5-7 of his reply:-

- i. "Rakesh Rastogi vs. M/s Citi Centre Developers", GC No. 1509 of 2019
- ii. "Maj. Deepak Chauhan and Anr. v. ATS Estates Pvt. Ltd.", GC No. 1425 of 2019
- iii. "Pradeep Upadhyaya v. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.", (File No. 102/M(SG) 1351 of 2019),
- iv. "IREO Grace Real Tech Pvt. Ltd. v. Abhishek Khanna & Ors.", Civil Appeal No. 5785 of 2019.

13. The learned Counsel for the respondents further relied upon clause 7.5 of the agreement for sale whereby allottee has the right to cancel his allotment and in that event the respondents are entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment and shall refund the balance amount.

14. The undersigned considered the arguments of both the Counsels of the parties, also gone through the available record of the instant case, and also perused the judgements noted above.



15. The relief sought by the complainant is for refund of Rs.19,74,621/- along with interest on the ground that basic amenities were not provided by the respondents and the shop is not viable for earning livelihood. On the other hand, it is the case of the respondents that the date of delivery of possession was September 2022 and they obtained PCC/OC from the Competent Authority on 07.06.2021 and after obtaining the PCC/OC, the respondents offered possession vide their letter dated 21.06.2021. However, the complainant has not taken possession of his shop. Instead, the complainant has filed the present complaint on 03.02.2022 which was thus pre-mature.

16. While glancing through the Partial Completion/Occupancy Certificate dated 07.06.2021 issued by the Competent Authority i.e Municipal Council, Zirakpur for the project "Maya Garden Magnesia, Village Singhpura, Zirakpur revealed that it was issued for Block-1 and it is the case of the respondents as per para 4 of the reply dated 06.07.2022 that this certificate is with respect to Block-1 wherein the shop of the complainant is situated.

17. The complainant in his complaint mentioned that he booked Shop No.3096 admeasuring s.area 260 sq. ft having carpet area 140.666 sq. ft.. Further perusal of Clause G of the agreement for sale dated 11.11.019 entered into between the complainant and respondent no.1 Barnala Builder, corroborates this fact that the Unit No.3096 having carpet area of 140.660 sq. ft. Type Shop, on Third Floor was booked by the complainant.

18. The complainant further mentioned in his complaint his visits to the project on 22.07.2021 and 28.09.2021 and noticed that there were no basic amenities like drinking water, toilets and lifts were not operational. This complaint was instituted on 03.02.2022. It is to

be noted that the PCC/Occupancy Certificate was obtained by the respondents on 07.06.2021 and the date of possession mentioned in the agreement for sale dated 11.11.2021 was September 2022. Thus, it is clear that the respondents have ample time to complete the basic amenities before the date of September 2022.

19. From the above discussion, it is clear that possession of the shop was to be delivered to the complainant on or before September 2022 as per the terms and conditions of the agreement for sale dated 11.11.2019. It is also apparent from record that the respondents have offered possession to the complainant after obtaining the PCC/OC vide their letter dated 21.06.2021 - which date is prior to the date of September 2022 - the date stipulated in the agreement for sale dated 11.11.2019, for handing over possession of the shop. Thus, it is held that the respondents offered the valid possession of the shop within the timeline agreed between the parties after obtaining the PCC/OC.

20. It is noted that the complainant has not been able to place on record any documentary evidence that he has challenged this PCC/OC before the Competent Authority, meaning thereby PCC/OC has been issued correctly by the Municipal Council, Zirakpur on 07.06.2021. It is the contention of the complainant that Completion Certificate and Occupancy Certificate was not shown to him. Section 11(4)(b) of the Act of 2016 clearly states that the promoter is responsible to obtain the completion certificate or Occupancy Certificate and make the same available to the allottees individually or to the Association of Allottees. In the present case it is a matter of record that the respondents have obtained PCC/OC from the Municipal Council, Zirakpur, the competent authority, on 07.06.2021 and thereafter offered possession to the complainant on 21.06.2021. This

date of 21.06.2021 is prior to September 2022 the date of possession mentioned in the agreement for sale dated 11.11.2019 entered into between the parties.

21. Further, in Section 18(1) of the Act of 2016 it is clearly mentioned that refund to any allottee cannot be denied if the promoter fails to give possession of the unit in accordance with the terms of the agreement of sale. However, in this case the respondents offered possession vide their letter dated 21.06.2021 after obtaining the PCC/OC from the Competent Authority. Thus, this provision of Section 18(1) of the Act of 2016 does not extend any help to the complainant in seeking refund.

22. In view of the above discussions and observations, it is held that there is no merit in the complaint and the complainant is not entitled for any refund of the amount of Rs.19,74,621/-. This complaint is hereby accordingly dismissed.

23. However, perusal of the 'Term no.1.2' of the Agreement for Sale dated 11.11.2019 entered into between the complainant and the respondent/promoter shows that the cost of the unit was Rs.20,00,000/- + GST and other charges (EEC+PBC+FFC+CF) was Rs.1,04,000/- + GST. From the pleadings of the complainant, it is clear that the complainant has paid Rs.6,51,100/- on 25.10.2019 vide Cheque No.984103 in favour of Barnala Builders; and Rs.3,48,521/- dated 12.11.2019 vide Cheque No.984110 in favour of Barnala Builders totaling to Rs.9,99,621/- before the execution of the Agreement for Sale. Both these cheques have duly been acknowledged by the respondent/promoter as these cheques contained the stamp of Barnala Builders. Thereafter, the complainant has also paid Rs.9,00,000/- on 11.11.2019 itself – the date of execution of agreement for sale. Thus,

the acceptance of more than 10% of the cost of the unit by the respondent/promoter is contravention of Section 13(1) of the Act of 2016. For the sake of convenience Section 13(1) reads as under:-

**"13. No deposit or advance to be taken by promoter without first entering into agreement for sale.--** (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

24. It is further prescribed in the Act of 2016 that on contravention of any Section other than Section 3 or Section 4 of the Act of 2016 by the respondent/promoter, he shall be liable to a penalty upto 5 percent of the estimated cost of the real estate project. For the sake of convenience Section 61 of the Act of 2016 is reproduced hereunder:-

**"61. Penalty for contravention of other provisions of this Act.--** If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority".

25. It is the consistent case of the complainant that the respondent/promoter has accepted more than 10% of the cost of the unit without entering into agreement for sale. The complainant has paid Rs.9,99,621/- before execution of agreement for sale. This fact is further corroborated by Annexure A-3 which is ledger account (of Shri

Ashwani Midha SD-3096) maintained by the respondent/promoter, a copy of which is attached by the complainant with his complaint reflecting the receipt of Rs.6,51,100/- on 29.10.2019 and Rs.3,48,521/- on 16.11.2019 (date is not fully legible).

26. Thus, from the above facts it appears that the respondent/promoter has contravened Section 13(1) of the Act of 2016 by accepting more than 10% of the cost of the unit.

27. Registry of this Authority is accordingly directed to issue notice under Section 61 of the Act to the respondent/promoter M/s Barnala Builders to show cause why proceedings under above said Section be not initiated against it and to submit his written explanation within 15 days of the receipt of this order.

28. Any application, if pending is also disposed of.



(Binod Kumar Singh)  
Member, RERA, Punjab

RERA, Punjab