

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

Complaint No.0445 of 2022
Date of Institution : 29.08.2022
Date of Decision: **24.06.2025**

1. Rajeev Sharma
2. Mukesh

Both residents of # A5 403, Nirmal Chhaya Towers, VIP Road, Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140603

....Complainants

Versus

1. M/s V.N.Sharma Builders Pvt. Ltd.
2. NK Sharma

Charanji Enclave, Lohgarh, Ambala-Chandigarh Highway, Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140603

....Respondents

Present: Shri Mandeep Singh Khillan, Advocate for complainants
Shri Ambrish Sharma, Advocate for respondents

ORDER

This complaint in Form 'M' 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) was instituted on 29.08.2022 by the complainants in their individual capacity against the respondents seeking possession of Apartment Number 705, 7th Floor, Tower No.4 (3BHK) having 1690 sq. ft (super area) in the project namely **"Savitry Greens" (Registration Number PBRERA-SAS79-PR059)** being developed by respondents at VIP Road, SAS Nagar, Punjab.

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

Amu

"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".

"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 complainants submitted the following in their complaint which is summarized below:-

3.1 The complainants allotted 3BHK Apartment No.705, having super area measuring 1690 sq. ft. on 7th Floor, Tower 4 in the project "Savitry Greens at the total sale consideration of Rs.30,11,000/- vide allotment letter dated 23.08.2018 and thereafter a Buyers Agreement was entered into between the complainants and respondents on 24.08.2018.

3.2 It is further averred that the complainants had paid a sum of Rs.5,00,000/- vide Receipt no. 9971 dated 24.08.2018 out of the total sale consideration and balance was disbursed by M/s IIFL Home Finance Ltd. from where the complainants have availed home loan and executed a Tripartite Agreement on 29.12.2018, confirmed by the respondents in its legal notice dated 01.08.2022.

3.3 It is contended that the complainants sent two legal notices dated 09.06.2022 and 01.08.2022 respectively requesting the respondent to raise the final demand of the balance amount to be paid by the complainants and also to hand over physical possession of the apartment to complainants, which was offered by the respondents vide their letter dated 04.06.2022 but without

mentioning the balance payable by complainants as the same was required to be submitted with bank from where the complainants had availed home loan for disbursal of the loan amount.

- 3.4 However, the respondents had raised an arbitrary and unreasonable demand of Rs.53,00,000/- as total consideration for the allotted apartment vide their legal notice dated 01.08.2022 and threatened to cancel the allotted apartment and forfeit the amount deposited by complainants in case of non-payment.
- 3.5 The complainants relied upon Clause 4(a) of the Buyers Agreement dated 24.08.2018 whereby possession was to be handed over within three years from the date of execution of Buyers Agreement i.e. by 23.08.2021.
- 3.6 Thus, the respondents have delayed possession of the apartment as they were not able to raise demand for the balance consideration so agreed, which resulted into other expenses and losses to the complainants on account of payment of rent etc.
- 3.7 The complainants further submitted that as per Clause 2 of the Buyers Agreement, the total cost of the Apartment as was Rs.30,11,000/- inclusive of all other charges and not Rs.53,00,000/-being demanded by the respondents, hence was illegal and arbitrary. Thus, respondents have breached the terms of the Buyers Agreement and demanding payment which was never agreed and not handing over the possession after receipt of substantial amount.
- 3.8 It is the prayer of the complainants to direct the respondents
- 3.8.1 To raise demand of balance amount as per terms of the Buyers Agreement dated 24.08.2018

3.8.2 To calculate and adjust the interest as provided in Section 18 of the Act for the period of delay in handing over possession of the allotted apartment.

3.8.3 To handover physical possession of the allotted apartment complete in all manners.

4. Upon notice to the respondents, Shri Ambrish Sharma, Advocate appeared and submitted reply dated 13.03.2023. The respondents have taken following preliminary objections:-

4.1 This Authority has no jurisdiction to entertain and decide the present complaint. Regarding the dispute about cost of the apartment, it is contended by the respondents that these documents were only provided to the complainants to avail housing loan as none of banks were ready to sanction huge amount of loan to the complainants as they were unable to fulfil the financial criteria and that is why complainants availed loan from private financial company. This dispute can only be resolved by leading evidence before the civil court.

4.2 Complainants have concealed the material facts from this Authority thus they are not entitled for any relief.

4.3 As per Clause 14 of the Buyers Agreement all disputes shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration under the Arbitration & Conciliation Act, 1996 at Zirakpur.

4.4 The complaint is bad for mis-joinder of necessary party as complainants have mortgaged the apartment with the IIFL Home Finance Ltd. SCO - 2907-2908, 2nd Floor, Sector - 22-C, Chandigarh, wherefrom they availed housing loan, but failed to implead FI as one of the respondents.

- 4.5 Complainants have made false claim and are liable to be prosecuted in view of Section 209 of the IPC.
- 4.6 The present complaint has been filed just to get undue advantage against the respondents.
5. Respondents also submitted para-wise reply to the complaint which is summarised below:
- 5.1 Respondents while admitting booking of Apartment No.705 in Tower No.4, in housing project "Savitry Green" at Zirakpur alleged that the costs of the apartment was Rs.53,00,000/-. It is further submitted that complainants perused the term and conditions of booking of Apartment and filled and signed pre-application form on 23.08.2018 and required to pay cost of Apartment of Rs.53,00,000/-, in accordance to their opted payment plan. Apart from above cost of apartment complainants were required to pay Rs.1,10,000/- i.e Rs.52,000/- towards cost of cupboard and Rs.58,000/- towards cost of kitchen. Complainants are misusing the documents i.e. allotment letter and Buyers Agreement provided to them for availing housing loan facility. As noted above, none of the banks were ready to sanction loan to the complainants for the cost of Rs.53,00,000/- so documents for lesser value i.e respondents issued fresh allotment letter and agreement to sell for lesser value of Rs.30,11,000/-.
- 5.2 Complainants paid Rs.18,08,000/- till date as part payment towards the cost of apartment out of Rs.53,00,000/-. It is further alleged that the respondents requested the complainants to clear the cost of the apartment but they ignored their request.
- 5.3 Respondents sent offer of possession on 04.06.2022 vide their letter ref. no. NK/57165 advising complainants to clear entire pending dues and get the sale deed executed of the apartment.

However, complainants shown their inability to clear entire balance cost immediately and sought time to pay the balance payment. Complainants also handed over cheque no. 342467 dated 24.06.2022 for Rs.4,00,000/-, cheque no. 342468 dated 27.06.2022 for Rs.4,00,000/-, cheque no. 342468 dated 29.06.2022 for Rs.4,00,000/-, cheque no. 342464 dated 02.07.2022 for Rs.4,00,000/- and cheque no. 342465 dated 04.07.2022 for Rs.4,00,000/- totalling to Rs.20,00,000/- to clear the part cost of Apartment out of Rs.53,00,000/- including late payment charges.

- 5.4 All the above stated five cheques on presentation were dishonoured vide memo dated 05.07.2022 as complainants instructed their bank to stop payment to cheat the respondents. Despite requesting on various occasions complainants have not cleared the amount and also failed to take over possession of their apartment and intentionally concealed these facts in present complaint. After dishonouring of cheques respondents sent legal notice on 01.08.2022 and also given various opportunities to the complainants to clear the balance amount, but instead sent vague reply dated 15.08.2022 to above said legal notice. It is contended that complainants committed defaults in making payments and the respondents have no option except to act as per the settled term and conditions. Respondents relied upon their rights to cancel the apartment by invoking the provision of section 11(5) of the Act and also entitled to deduct 10% of total cost of apartment. It is also stated that the act of complainants to stop payment of cheques proved that they are no more interested in the apartment and amounts to refusal to clear the balance cost of apartment.

- 5.5 It is averred that there was no delay on the part of the respondents in delivery of possession of the apartment and further they respondents are not liable to deliver the possession till they received entire cost of apartment and also relied upon Sections 19(6) and 19(7) of the Act. Respondents are suffering huge losses because of fraudulent act of the complainants and are going to avail legal remedies available to them. Respondents are not liable to deliver possession of apartment by getting only Rs.30,11,000/- instead of Rs.53,00,000/- which is the actual cost of apartment.
- 5.6 It is the prayer of the respondents that the complainants are not entitled for any relief as prayed for in the complaint. Instead, complainants be directed to take over physical possession of the allotted apartment by clearing all the dues or allow respondents to execute their rights in view of provisions 11(5) of the Act for cancellation of booking of Apartment in question.
- 5.7 It is further the prayer of the respondents they are going to file a complaint with competent Criminal Court in view of Section 195 of IPC and 340 of Cr.P.C. and complainants be directed to pay damages and litigation expenses to them for litigation. Respondents denied Exhibit C-1 and C-13 attached by the complainants with their complaint being wrong, false and unauthenticated documents.
- 5.8 Respondents also annexed following documents with its reply dated 13.03.2023:
- i. Booking Application form dated 23.08.2018
 - ii. Copy of Cheques and Memos dated 05.07.2022
 - iii. Copy of legal notice dated 01.08.2022
 - iv. Copy of letter to IIFL dated 13.09.2022
 - v. Copy of legal notice dated 07.12.2022

vi. Copy of police complaint undated

6. A para-wise rejoinder dated 04.10.2023 was filed by the complainants to the reply which is also summarized below:-

6.1 Complainants denied all the preliminary objections mentioned in the reply and stated that this Authority has jurisdiction to entertain the complaint and that all the documents are duly admitted by the respondents. All the pleadings are based on facts, evidence and law.

6.2 Regarding the objection about the Arbitration Clause, complainants relied upon and reproduced Sections 79, 88 and 89 of the Act which are being reproduced for the sake of brevity. As per Section 79 of the Act of 2016 this Authority is empowered to determine and no injunction shall be granted by any court in respect of any action taken or to be taken pursuant to any power conferred by or under this Act. Similarly, Section 88 of the Act is in addition to and not in derogation of the provisions of any other law for the time being in force and Section 89 of the Act says that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the remedy available to the complainants under the Act still subsists as it is in addition to remedy available before in any other forums.

6.3 In reply to the objection regarding non-joinder, the complainants admitted taking of housing loan but stated that they have not claimed any relief from the bank and it is inter-se dispute between the complainants and respondents. However, if needed, bank can be impleaded as necessary part. Rather the respondents have not approached this Authority with clean hand and the submissions made in the rejoinder are enough to show that respondents are

taking false pleas and relying on illogical and un-related documents. All the claims raised and documents submitted by the complainants are true and deserves to be accepted.

6.4 Respondents are giving false and frivolous facts and figures without any basis. Perusal of the alleged Application form dated 23.08.2018 which has been replaced with the original one with malafide intent, and is being referred by the respondents to substantiate the cost of apartment to be Rs.53,00,000/- is a sham document as there is no signature of the complainants as well as of the respondents on first page where the figure of Rs.53,00,000/- is written. Further, that the date on the said application is 23.08.2018 whereas in the agreement dated 24.08.2018 the date of such application form is stated to be 24.08.2018. This fact is sufficient to prove that respondents have tampered this document and the date to substantiate their version.

6.5 Complainants denied that they ever booked the apartment for Rs.53,00,000/-. How any Builder/seller (respondents) execute any under value agreement on legal stamp paper for submission with the bank by the purchaser (complainants) for availing loan it is beyond imagination of any prudent person. Complainants further denied that that such arrangement was made by the respondents as no bank was ready to sanction loan of Rs.53,00,000/- to the complainants. Complainants are husband and wife and were well sufficient to avail loan more than Rs.53,00,000/- as Mukesh Sharma-complainant no.2 is a Government employee and drawing salary of approximately Rs.53,000/- per month Rajeev Sharma-complainant no.2 was in business and earning around Rs.5-6 lakhs per annum.

Respondents admitted entering into the Buyers Agreement but mentioning false figures just to harass the complainants to usurp the hard-earned money and property owned/allotted to them.

6.6 Complainants admitted that vide letter dated 04.06.2022 respondents though offered possession of apartment but without mentioning balance amount. Complainants visited respondents and requested to raise demand of balance amount to be disbursed by bank but respondents have not acceded. Thereafter complainants sent notices on 07.06.2022 and 01.08.2022 to the respondents requesting to give demand notice which were never replied by them.

6.7 Complainants contended that at the time of booking they have handed over undated cheques bearing Ch. No.342464 to 342468 of SBI Bank of Account no. 10847957701 of Rs.4,00,000/- each as security for timely payment as per payment plan to be presented if the payment was not made. Vide their notice dated 01.08.2022 the complainants cautioned respondents not to misuse the same and return the same since the home loan of the complainants was sanctioned. But respondents misused the same. Respondents then sent legal notice (01.08.2022) duly replied by complainants on 15.08.2022. However, respondents did not file any complaint in any court of law regarding dishonouring of cheques. Complainants have not breached any terms of the Buyers agreement dated 24.08.2018 or denied to pay the agreed consideration of the said apartment. Respondents have no right to cancel or terminate the allotment of the apartment. The allegations of cheating and fraud have no basis and respondents are not entitled for any deduction or forfeiture. They themselves are defaulters and hence cannot be benefitted.

6.8 Complainants have paid entire sale consideration of Rs.30,11,000/- (from their own sources or through bank) as per Buyers Agreement dated 24.08.2022 and further undertakes to pay if any amount found deficit by this Authority as per the terms and documents executed between the parties. Respondents are trying to frustrate the title and claim of complainants by sending termination notice dated 07.12.2022 to complainants' bank and trying to dispute possession by forcibly and illegally occupying apartment of complainants against which complainants have lodged a complaint with Police station, Zirakpur.

6.9 In view of the actions and misdeeds of the respondents during lis pendens it is a fit case where interim relief is to be granted as prayed for.

6.10 It is the prayer of the complainants to allow the complaint.

7. We have heard arguments of both the counsels on the stipulated date of hearing.

8. Learned Counsel for the complainants submitted written arguments. The arguments of learned Counsel for the complainants are mostly replica of complaint as well as of the rejoinder. However, in brief complainants were jointly allotted Apartment no.705, 7th Floor, Block T-4, having Super Area 1690 Sq. Ft. by the respondents vide allotment letter reference no. NK/19154 dated 23.08.2018 issued on their letter head for a total sale consideration of Rs.30,11,000/- inclusive of taxes etc. in the project namely 'Savitry Greens' situated at Village Bishanpura, VIP Road, Zirakpur. At the time of booking the respondents got some blank forms signed from Complainants citing Apartment application formalities. A sum of Rs.5,00,000/- was paid at the time of booking vide cheque no. 342463 dated 23.08.2018 by the complainants. An Apartment buyer agreement was entered into on 24.08.2018 containing the terms and conditions of the allotment. Learned Counsel for the complainants drew

attention of the Authority towards Clause 2(a) and 8(c) of the Buyers Agreement. It is further argued by the complainants that they availed a loan of Rs.22,00,000/- from IIFL Home Finance Limited and even permission to mortgage the allotted apartment in favour of IIFL Home Finance Limited was accorded by the respondents vide their letter no. NK/50650 dated 29.12.2018 and thereafter a Tripartite Agreement was executed on 29.12.2018. It is further argued by the complainants that as per practice in the past respondents were raising demand which was duly honoured/ disbursed from the loan. Complainants have paid a sum of Rs.18,08,000/- in total honouring all demands raised by respondents and tabulated the detail in their written arguments and only a sum of Rs.9,99,000/- (Rs. 9,00,000/-+Rs. 50,000/- as CMRC + Rs.40,000/- as IFMS & Rs. 9,000/- as GST on CMRC) is to be paid at the time on possession. Complainants admitted that respondents offered possession of the allotted apartment to them vide letter dated 04.06.2022, but without any balance amount and even on request no demand was raised by the respondents. Complainants also sent written notice on 07.06.2022 through registered post which was never replied. Complainants admitted handing over undated cheques bearing serial No. 342464 to 342468 of Rs.4,00,000/- each drawn on SBI as security to be presented if payments were not made. Since Home Loan was sanctioned to the complainants so they informed to respondents vide written notice dated 01.08.2022 requesting not to misuse these cheques, instead were presented for encashment and respondents even served legal notice u/s 138 of NI Act upon complainants duly responded to by complainants vide reply dated 15.08.2022. It is further argued that no document as alleged was ever executed for the allotted apartment at the rate of Rs.53,00,000/-. Apartment was purchased only for a consideration of Rs.30,11,000/-. The plea of the respondents that under-value agreement was executed as no bank is giving us loan, is baseless and false as at the relevant time complainants had income sufficient to avail loan more

than Rs.53,00,000/-. It is also argued that in the year 2021-22 the collector rate/approved rates of the apartment were Rs.1700 Per Sq. Ft. There are no signatures of the complainants or respondents on the first page of the application form dated 23.08.2018 submitted by respondents to substantiate the cost of Apartment to be Rs.53,00,000/- It may be one of the initial documents which were got signed by the respondents from the complainants citing booking formalities on blank form but these documents have been superseded by Apartment Buyer agreement, Tripartite agreement, Allotment letter etc. and created just to substantiate the amount of Rs.53,00,000/-. Complainants further argued that during pendency of this complaint before this Authority respondents have filed frivolous litigations and police complaints to harass them. Further, respondents have placed reliance on sale deeds executed between the respondents and the complainants like buyers are not relevant to the present complaint. It is the prayer of the complainants to direct respondents to hand over possession of the allotted apartment with compensation and also litigation expenses.

9. Respondents have also filed written arguments. In the written arguments, while admitting the allotment of Apartment No.705 in Tower-4 to the complainants, it is the case of the respondents that the costs of the apartment was Rs.53,00,000/- and complainants signed the pre-application form on 23.08.2018 and not Rs.30,11,000/-. It is argued that this Authority has not been empowered to decide the premature complaint and relied upon Section 11(5) of the Act of 2016 which clearly states that "*the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause*". Regarding the relief sought by the complainants for issuance of directions to the respondents to raise demand of the balance amount as per the Buyers Agreement, it is argued by the respondents that there is no such provision empowering this Authority to

direct respondents to raise demand of the balance amount as per terms of the buyer's agreement only. It is argued that complainants raised the dispute about the cost of apartment by using documents provided to them for availing the housing loan as none of the banks were ready to sanction such a big amount of loan due to non-fulfilment of the financial criteria and they availed a loan of Rs.22,00,000/- from private financial company IIFL Home Loan. This dispute can only be resolved by leading the proper evidence and cross examination of the witnesses before the civil court. It is also argued that to resolve the dispute regarding the cost of apartment a Civil Suit for declaration bearing No.894 of 2023 has been filed by the respondents which is pending. It is further argued that complainants are misleading this authority despite having knowledge that the application form is single page document and the copy page of original application form is two sides of one page document as "two sides of one coin", and it cannot be changed because it is back-to-back document. Learned Counsel for the respondents drew attention of this Authority towards para no.8 of Civil Suit No 894 of 2023 reflecting actual cost of Apartments sold by the respondents in same residential project for the same period. From the sale deeds attached it is clear that since 2018 respondents have not sold even a single Apartment similar to the Apartment in question for less than Rs.53,00,000/- and at present the price of the Apartment in question is more than Rs.57,00,000/- but in the year 2018 it was about Rs.53-54,00,000/-. It is argued that there was no reason to sell the apartment/Apartment at lesser cost of Rs.30,11,000/- to complainants. The collector rate fixed by the Government of Punjab for 7th floor in Zirakpur Rs.2200/- per sq. ft. i.e. for the purpose registration of conveyance deed. This apartment is of 1690 sq. ft. so as per collector rate calculation, the cost of apartment comes more than the rate claimed by the complainants. It is further argued by the respondents that the complainants are not entitled to adjust the interest for late possession and

also payment of the monthly interest as per Section 18 of the Act for the period of delay without making the balance due payment. Respondents admitted that out of Rs.53,00,000/- complainants paid only Rs.18,08,000/- as part payment. Respondents also relied upon Sections 19(6) and (7) of the Act. As per Section 19(6) of the Act, every allottee "*shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale...*". Further, as per Section 19(7) of the Act, "*.. allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)*". In view of above position, respondents are not liable to deliver the possession of apartment and there is no delay on their part. As such complainants are not entitled for any interest/compensation for delayed possession. It is further argued that the complainants concealed the fact about dishonouring of cheques issued to the respondents by the complainants. Respondents without receiving full cost of the booked apartment issued offer of possession letter vide ref. no. NK/57165 dated 04-06-2022 to complainants. Complainants visited their office and handed over cheque no. 342467 dated 24.06.2022 for Rs.4,00,000/-, cheque no. 342468 dated 27.06.2022 for Rs. 4,00,000/-, cheque no. 342466 dated 29.06.2022 for Rs.4,00,000/-, cheque no. 342464 dated 02-07-22 for Rs.4,00,000/- and cheque no. 342465 dated 04-07-22 for Rs.4,00,000/- Totalling to Rs.20,00,000/- to clear the part cost of apartment out of total of Rs.53,00,000/-. On presentation all were dishonoured as complainants instructed their bank to stop payment of all the cheques. However, complainants have not disclosed these facts in their complaint. It is also argued that respondents issued legal notice on 01.08.2022 giving opportunities to clear the balance cost of apartment but instead of making payment sent vague reply dated 15.08.2022. Respondents have right to invoke the provision of Section 11(5) of the Act and are also entitled to deduct

10% of total cost of apartment. A criminal complaint no. 709 of 2023 U/ss 420, 120-B, 34 of IPC has been filed against complainants in the court of JMJC, Derabassi. The complainants have also concealed this fact in his complaint. It is further the case of the respondents that the present complaint is bad for misjoinder of the necessary party. The complainants have not impleaded IIFL Home Finance Ltd. SCO - 2907-2908, 2nd Floor, Sector - 22-C, Chandigarh, as a necessary party from where they availed loan facility of Rs.22,00,000/- from where they paid part cost of apartment to the respondents. It was the duty of the complainants to make request to the IIFL from time to time for disbursement of loan amount to the respondents, but they have not made any request for disbursement of the loan amount in order to save the interest. Complainants have intentionally not placed on record the copy of loan sanction letter and Tripartite Agreement in order to mislead this Authority. It is the prayer of the respondents to dismiss the complaint.

10. We have also heard the oral arguments of both the parties on the stipulated date.

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

12. Firstly, we are dealing with the preliminary objections. Section 31 of the Act, authorises any aggrieved person to file a complaint with this Authority for any violation or contravention of the provisions of the Act of 2016. Thus, the complainants were within their rights to approach this Authority for the redressal of their grievance. Accordingly, the objection of the respondents questioning the jurisdiction of this Authority to entertain this complaint, has no force.

13. Regarding the clause of arbitration in the Agreement being used to exclude the jurisdiction of the Authority, this contention is rejected in line with the decision of the Supreme Court in the case "M/s Emaar MGF Land Ltd. vs

Aftab Singh" (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos.23512-23513 of 2017.

14. It is inter-se disputes between the complainants and the respondents only. Even this case is not for seeking refund of the amount deposited by the complainants with the respondents. The relief sought by the complainants in this complaint is for possession of the apartment for which they have made payments. As such, this objection of the respondents has no legs to stand and is rejected accordingly.

15. Regarding the objection that the complainants have raised false claim in this complaint, perusal of the record shows that the complainants have booked and allotted 3BHK Apartment no.705, 7th Floor, Tower No.4 having area of 1690 sq. ft by the respondents themselves vide allotment letter dated 23.08.2018 mentioning the total sale price of Rs.30,11,000/- and received payments thereto. Regarding prosecuting the complainants, respondents have rights to avail legal remedies available to them, if advised so. Thus, there is no substance in this objection raised by the respondents.

16. Next objection of the respondents is that the present complaint was filed by the complainants to get undue advantage. It is again stated at the cost of repetition that the complainants have been allotted Apartment No.705 (supra) and they paid substantial payments thereto and through this complaint they are seeking possession of that apartment, as such, there is no question of undue advantage sought by the complainants.

17. From the above pleadings and arguments, the following questions are to be adjudicated upon:

- Am-1
- i. What is the cost of the apartment No.705, 7th Floor, allotted to the complainants?;
 - ii. Whether the cheques detailed above were issued as security by the complainants to the respondents?; and

- iii. Whether the offer of possession dated 04.06.2022 was valid offer of possession without completion/occupancy certificate issued by respondent to the complainants?

i. **What is the cost of the apartment No.705, 7th Floor, allotted to the complainants**

18. In the pleadings and also in the written arguments submitted by the respondents it is their case that the cost of the Apartment is Rs.53,00,000/- and not Rs.30,11,000/- as claimed by the complainants. On the other hand, it is the consistent case of the complainants that the cost of the apartment No.705, 7th Floor, Tower-4, in the project "Savitry Green" situated at Village Bishanpura, VIP Road, Zirakpur is Rs.30,11,000/-. Perusal of allotment letter dated 23.08.2018 issued to Mrs. Mukesh Sharma wife of Mr. Rajeev Sharma and Mr. Rajeev Sharma s/o Shri Som Dutt Sharma bearing reference no.NK/19154 on the letter head of V.N.Sharma Builders Pvt. Ltd. annexed by the complainants with his complaint as Annexure A-1 would reveal that the cost of the project mentioned therein including GST, Club membership registration charge and IFMS charges is Rs.30,11,000/-. The relevant para/portion of this allotment letter dated 23.08.2018 consisting of two pages is reproduced below:-

"..3. *Sale Considerations are as follows:-*

<i>Basic Sale price</i>	<i>Rs.26,00,000/-</i>
<i>GST on BSP @ 12%</i>	<i>Rs.3,12,000/-</i>
<i>Club Membership Registration charges</i>	<i>Rs.50,000/-</i>
<i>GST on CMRC</i>	<i>Rs.9,000/-</i>
<i>IFMS</i>	<i>Rs.40,000/-</i>
<i>Total consideration of Sale</i>	<i>Rs.30,11,000/-</i>
<i>IFMS and CMRC are mandatory and non-refundable."</i>	

19. It is noteworthy that this allotment letter is signed by the Director of the respondents' firm with stamp of the builder/promoter and also by the complainants herein. The cost of the apartment No.705, 7th Floor is further

corroborated by Buyers Agreement dated 24.08.2018 wherein as per clause 2(a) of the Sale consideration, the cost of the apartment is mentioned as Rs.26,00,000/- including basic sale price, preferential charges, if any and it is also mentioned in clause 2(b) that the purchaser has already paid Rs.5,00,000/- out of the total sale consideration. This document including allied papers have also been signed by developer as well as by the allottees i.e complainants on all the papers including payment plans.

20. On the other hand, the respondents have taken the plea in para 4(1) of their reply on merits that

"the said documents were prepared for lesser value because none of the banks were ready to sanction loan to the complainants at the cost of Rs.53,00,000/- as the complainants were not fulfilling the re-payment of loan criteria to avail loan of such a big amount. On the request of the complainants and in order to help of the complainants, the respondents issued fresh allotment letter and agreement to sell for lesser value of Rs.30,11,000/-. By using said documents, the complainants avail the loan facility from private home loan institution instead of bank..."

21. To substantiate their case the respondents have also attached copies of sale deeds with their written arguments dated 19.09.2024 for the periods from December 2021, 2022 and 2023 and the cost of the apartment/unit is ranging from Rs.54,20,000/- to Rs.57,50,000/-.

22. To counter and rebut this plea/argument of the respondents, the complainants have in para-2 of their written arguments stated that the apartment has been purchased jointly in the names of the complainants and at the relevant time complainant had income well sufficient to avail loan more than Rs.53,00,000/-, if desired. Complainant no.1 Mrs. Mukesh Sharma is a government employee and drawing salary of more than Rs.53,000/-(as per salary slip annexed by the complainant Ms. Mukesh Sharma for the month of July 2018) and Mr. Rajeev Sharma, co-complainant was a businessman and

at the relevant time was earning around Rs.5-6 lakhs per annum. It is further argued that the complainants were able to avail housing loan of more than Rs.53,00,000/-. However, they availed only loan of Rs.22,00,000/- only as per sanction letter dated 13.12.2018 accorded by IIFL Home Finance Limited as the cost of the apartment was Rs.30,11,000/-.

23. The respondents have filed Criminal Complaint No.709 of 2023 under Sections 420, 120-B, 34 IPC before the learned Judicial Magistrate First Class, Derabassi. Respondents have also annexed a copy of civil suit No.894 of 2023 filed against the present complainants before the learned Additional Civil Judge, Senior Division, Derabassi for declaration to the effect that actual price of the flat/apartment No.705, Tower No.4 is Rs.53,00,000/- and not Rs.30,11,000/-. Respondents annexed copies of the civil suit as well as criminal complaint with his application dated 07.12.2023 for placing on record above said documents.

24. From the above discussion, it is noteworthy that nowhere the respondents have denied that they have issued allotment letter on 23.08.2018 and thereafter entered into Buyers Agreement on 24.08.2018. In both these documents the cost of the apartment mentioned is Rs.26,00,000/- plus GST as reproduced above i.e. Rs.30,11,000/-. Both these documents have been signed by the Director/Developer of the respondents with rubber stamp and also by the complainants. Now at this stage the respondents are saying that they have issued these documents mentioning lesser amounts to the complainants to avail loan is of no help to them. How, a builder/promoter (respondents) can issue such documents to any purchaser (complainants) of lesser amounts knowing well that the same can be used/challenged at any time by the said purchaser in any court of law, if at any stage, there is any dispute arisen between the seller and the purchaser. Further, perusal of legal notice dated 01.08.2022 sent by the respondents to the complainant Mrs. Mukesh Sharma would reveal that the respondents clearly stated in para 3

that "By considering your request, in order to your help, my client issued fresh allotment letter and agreement to sell for value of Rs.30,11,000/-." Perusal of the pre-application form dated 23.08.2018 annexed by the respondents with his application dated 01.06.2023 for placing on records, would reveal that the first page of this document is not signed by anyone from the parties i.e complainants or respondents. However, the second page is signed by Sale Head and Director Sales and Marketing of respondents and also by customers (Rajeev Sharma and Mukesh Sharma). It was argued by the complainants that this page has been changed and manipulated by the respondents as there were no signatures of the complainants on first page. Regarding the sale deeds annexed by respondents to show that during the period under consideration the sale consideration of apartments was not less than Rs.53,00,000/-. The respondents admitted that the complainants had paid Rs.18,08,000/-. However, it is the business of the parties how to confirm the deal and on what price. From the allotment letter and buyers' agreement it is established on record that both the parties had agreed to the price of Rs.30,11,000/- for the apartment sold to the complainants and put their signatures thereafter. Thus, respondent cannot deny their documents i.e allotment letter dated 23.08.20218 and Buyers Agreement dated 24.08.2018 issued in favour of the complainants indicating the cost of the apartment as Rs.30,11,000/- at this stage. The net conclusion is that the price of the apartment is held to be Rs.30,11,000/-.

ii. **Whether the cheques detailed above were issued as security by the complainants to the respondents?**

25. Regarding issuance of cheque, it is the consistent case of the complainants that they had issued these cheques bearing Ch. No.342464 to 342468 of SBI Bank of Account no. 10847957701 of Rs.4,00,000/- each to the respondents as security assuring the respondents for timely payment as

per payment schedule. It is further the case of the complainants that these cheques were to be presented if the payment was not made as per payment schedule. Complainants further stressed that they have sent notice dated 01.08.2022 through Shri Mandeep Singh Khillan, Advocate to respondents not to use these cheques and return the same as the home loan of the complainants has been sanctioned. Relevant paras 7 and 8 of the legal notice dated 01.08.2022 is reproduced below:

"7. That also please note that my clients at the time of booking have handed over few undated cheques bearing Ch.No.342464 to 342468 of SBI Bank of Account No.10847957701 of 4 lakhs each as security to the timely payment of the amount to be made by my client as per payment plan post booking, the same were to be presented for payment of the payment was not made in. But as my clients Home Loan was sanctioned so they were not required to be presented and payment was timely made through bank disbursement. As such though this notice I on behalf of my client require you to also handover the said cheques to my client so that the same may not be misused.

8. That kindly note of the fact that my clients home loan is already approved for the payment of the balance sale consideration towards the allotted apartment and is partly disbursed by my clients bank and the payment has been credited directly into your account and as was earlier done the balance shall be disbursed upon your raising of formal demand from my client. As such it is apparent that my client has all the intentions and has all the capacity and funds to pay the balance amount and the only impediment is your not raising the final demand which through this legal notice we require you to do and in the meanwhile handover the possession of the allotted flat to my client being the bona fide purchaser/allottee though its possession as per Clause 4(a) of the Buyers Agreement already deemed to vests with my client".

26. It is noteworthy that the respondents presented four cheques i.e Cheque No.342467, Cheque No.342468, Cheque No.342464 and Cheque No.342465 out of five cheques on 24.06.2022, 27.06.2022, 02.07.2022 and 04.07.2022 respectively which were dishonoured. It is noteworthy that all the above four cheques as per bank slips enclosed by the respondent along with photocopies

of cheques and dishonoured memos, were presented on 05.07.2022 and dishonoured memos were also issued on 05.07.2022 by the bank on the same date promptly. It is questionable. From the above narration it can safely be concluded that the respondent has presented these cheques on same day i.e on 05.07.2022 but mentioning different dates on each cheque. There is no mention about fifth cheque issued by the complainants.

27. Further, respondents sent legal notice on 01.08.2022 to complainant No.1 Mrs. Mukesh Sharma, requesting therein to make payment and also mentioned about offer of possession dated 04.06.2022 and handing over of five cheques of different dates of Rs.4,00,000/- each, which were presented for encashment, but were dishonoured. The prayer in the said legal notice dated 01.08.2022 to the complainant was to deposit the balance cost of the flat + late payment charges within a period of fifteen days to avoid cancellation of the apartment. Complainant replied to this notice on 15.08.2022 denying the allegations levelled in legal notice dated 01.08.2022 and showed their intentions to pay the balance amount of Rs.12,03,000/- as they had already paid Rs.18,08,000/-. It is obvious that possession of the apartment would be subject to clearance of pending payments by the complainants. As emphasized in reply dated 15.08.2022 submitted by the complainants to the legal notice dated 01.08.2022 issued by respondents, it is clearly mentioned by complainants that they are willing to pay the balance sum of the apartment at the time of taking possession. However, it is also the case of the complainants that no case has been filed by respondents in any court regarding dishonouring of cheques against them.

iii. **Whether the offer of possession dated 04.06.2022 was valid offer of possession without completion/occupancy certificate issued by respondent to the complainants?**

28. Perusal of offer for possession letter No.NK/57165 dated 04.06.2022 addressed to the complainants by the respondents' authorised signatory

mentioning therein that *"the flat is ready for possession. You are requested to visit this office immediately to collect the keys and take the physical possession immediately after making full and final payment and execute the sale deed of the flat also."* It is the case of the complainants that since no amount was mentioned in the offer of possession letter dated 04.06.2022 as the same was required to be submitted to the bank, for releasing the final installment, from where the complainants availed loan, they visited the office of the respondents requesting them to raise demand so that the same can be released by the bank but their request was not acceded to by the respondents. It is pertinent to mention here that it is general practice while taking loan from any financing institution, the said FI required demand from the respondent/promoter/builder to release the further installment. To substantiate and corroborate this fact, the complainants relied upon Tripartite Agreement dated 29.12.2018 for availing home loan of Rs.22,00,000/- with IIFL Home Finance Limited wherein respondents and complainants are also the signatory. Respondents also issued permission to mortgage dated 29.12.2018 in favour of above said FI. Thus, the prayer of the complainants to the respondents to raise demand for releasing the final amount by said FI was pre-requisite as per financial discipline which cannot be denied by the respondents knowing well that they had already granted permission to mortgage dated 29.12.2018. However, since there was no demand raised by the respondents, the complainants rightly visited their office and requested the respondents to raise demand for payment. It is also noteworthy that even this offer of possession was not supported by any completion/occupancy certificate.

29. For convenience Section 11(4)(b) of the Act of 2016 is reproduced below:

"11. Functions and Duties of Promoters.--

(4) The promoter shall—

(a)

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

30. Thus, the offer of possession dated 04.06.2022 without any completion/ occupancy certificate and demand was not valid offer in the eyes of the law. It is held to be invalid offer of possession.

31. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed

31.1 To pay interest under Section 18(1) of the Act of 2016 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 23.08.2021 as per clause 4(a) of the Buyers Agreement dated 24.08.2018 till the date of this order and in the first instance, the arrear of interest would be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 2017 from the date of receipt of this order.

31.2 To pay further 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 Apartment No.705, 7th Floor, in Tower No.04,(3BHK) measuring of 1690 sq. ft (super area) in 'Savitri Greens', VIP Road, Zirakpur, Mohali, Punjab and submit the compliance report.

31.3 to issue valid offer of possession after obtaining completion/occupancy certificate from the competent authority.


32. It may be noteworthy that in case compliance report is not submitted by the respondents 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.

33. 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".

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


(Binod Kumar Singh)
Member


(Rakesh Kumar Goyal)
Chairman


(Arunvir Vashista)
Member