

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

Complaint No.0006 of 2023
Date of Institution :10.01.2023
Date of Decision: 14.07.2025

Gourav Kumar Sharma, House No.249, Sector F, Sainik Colony, Jammu,
Pin Code 180011

....Complainant

Versus

1. Hero Realty Pvt. Ltd. through its Managing Director, 264, Okhla Industrial Area, Industrial Estate, Phase-3, New Delhi, Central Delhi, Pin Code 110020
2. UCO Bank through its Manager, SCO No.22, Phase-1, SAS Nagar, Mohali, Pin Code 160055

....Respondents

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration Number: PBRERA-SAS81-PR0114)

Present: Shri Gaurav Gupta, Advocate for the complainant
Shri Sanjeev Sharma, Advocate with Shri Vishal Singal,
Advocate for the respondent

ORDER

Through this complaint, complainant seek prescribed rate of interest for the period of delay till the date of handing over possession.

2. Brief facts as submitted by complainant in his complaint are summarized below:-

2.1 It is submitted that vide Allotment Letter dated 07.09.2018 respondent no.1 allotted a 2 BHK Residential Flat No. T-05/1103 on 11th floor in Tower T-05), 1095 Sq. Ft (Super Built Up Area) & 691Sq. Ft (Carpet Area) in the project "HERO HOMES MOHALI", located at Sector-88, SAS Nagar, Mohali, to complainant against the total Sale Price of Rs.49,31,896/-.

- 2.2 Respondent given a pre-drafted one-sided buyers agreement dated 12.09.2018 for signature and complainant was not allowed to change any terms of said buyers agreement. Complainant had to sign pre-drafted conveyance deed under compulsion as he had no other option.
- 2.3 Complainant availed a home loan of Rs.50,00,000/- from respondent No.2 i.e UCO BANK vide loan sanction letter dated 04.12.2018. Complainant paid full and final payment of Rs.51,10,560/- to respondent no.1.
- 2.4 As per "clause 7.1" of the buyers agreement possession of fully developed flat with all basic amenities was to be handed over to complainant on 13.01.2020. However, respondent failed to deliver possession within the said time.
- 2.5 In February 2020, complainant approached respondent to know about the status of possession status but no information was provided. Vide letter dated 13.01.2021 respondent issued a final demand for possession and vide another letter dated 14.01.2021 offered possession of apartment to complainant. Since no delay penalty was adjusted by respondent, however, on raising objection by complainant vide his email dated 14.01.2021 a sum of Rs.74,267/- was adjusted in final demand towards delayed penalty but was not as per the Act of 2016. Despite making payment of demanded amount on 06.02.2021 and thereafter issuance of No Due Certificate on 15.03.2021 to complainant, respondent did not complete the pending works of apartment. However, complainant took possession of incomplete flat on 03.07.2021. Complainant requested many times to respondent no.1 for delayed period interest but respondent refused to pay the same.

- 2.6 Since respondent did not pay delayed interest and complete pending works of the flat, he served a Legal Notice dated 27.12.2022 to respondent but he did not bother to pay, hence this complaint.
3. It is the prayer of complainant to direct respondent to pay interest for the delayed period in handing over the physical possession till the actual date of delivery of physical possession as per the provisions of the Act of 2016 with Rs.85,000/- as costs of Litigation to the complainant.
4. Upon Notice, Power of Attorney of Shri Sanjeev Sharma, Advocate was filed on behalf of respondent no.1 and Shri Arun Pathania, Manager of respondent no.2 appeared and sought time to file reply.
5. Respondent no.1 filed reply dated 20.06.2023 which is summarized below:
- 5.1 While admitting allotment of apartment No.T-05/1103, 11th Floor, Tower 05, at Hero Homes, Sector 88, SAS Nagar, Mohali, Punjab vide allotment letter dated 07.09.2018; entering into Apartment Buyer Agreement on 12.09.2018; and issuance of letter dated 14.01.2021 for possession it is contended that complainant was in violation of Section 19(6) of the Act of 2016 and as per Clause 7.3 of agreement complainant was to pay necessary payments as specified in agreement for sale. However, complainant was a regular defaulter in making payment of installments. In support of his contention, respondent no.1 has quoted Clause 7.3 of the agreement.
- 5.2 Respondent no.1 also submitted that due to Covid-19 *Force Majeure* position arisen and the real estate business has been adversely affected. In support of his contention, respondent no.1 annexed Circular dated 19.02.2020 issued by Ministry of Finance declaring Covid-19 as *Force Majeure*; Circular dated

13.05.2020 issued by Ministry of Housing and Urban Affairs; Circular dated 18.05.2020 issued by Maharashtra Real Estate Regulatory Authority; and Circular dated 28.10.2020 issued by this Authority.

- 5.3 It is submitted possession was offered to complainant on 14.01.2021 on receipt of Completion Certificate on 12.01.2021 and possession was taken by complainant on 03.07.2021 and conveyance deed was executed on 25.04.2022. It is also averred that complainant was in violation of Section 19(6) of the Act of 2016 whereby complainant was to pay necessary payments as specified in agreement for sale. However, complainant was a regular defaulter in making payment of installments.
- 5.4 However, respondent no.1 waived off late payment fee of Rs.13,975/- and also paid/adjusted Rs.74,267/- in the final demand before execution of conveyance deed accepted by complainant without raising any objection.
- 5.5 Respondent no.1 also cited judgement of the Hon'ble Supreme Court titled "*Ireo Grace Realtch Pvt. Ltd. Vs Abhishek Khanna*" Civil Appeal No.5785 of 2019 decided on 11.01.2021 wherein it was held that interest for period of delay is to be paid till date of offer of possession. Respondent no.1 also cited order dated 14.12.2021 passed by Real Estate Regulatory Authority, Panchkula in the matter titled "*Vikas Malhotra Vs BPTP*" (Complaint No.736 of 2020) wherein it was held that amount of taxes collected by builder cannot be considered a factor for determining the interest payable towards delay in delivery of possession.

6. Rejoinder was filed by complainant reiterating the contents of his complaint and controverting the contents of the reply.
7. It is noted that there was no response from respondent no.2/UCO Bank after their appearance on 06.04.2023 when Shri Arun Pathania, Manager appeared on behalf of bank and sought time to file reply. However, despite intimation by this Authority vide letter and email no one appeared for respondent no.2/UCO Bank till date.
8. The undersigned heard the arguments of both the counsels on the stipulated date.
9. It is argued by complainant that possession was to be delivered on 13.01.2020 but delivered on 03.07.2021 admitted by respondent no.1 itself and reiterated that all payments by complainant were on time. Regarding waiving off Rs.13,975/- it is stressed that respondent no.1 itself caused delay in crediting the instalment in the account of complainant and after realizing their mistake, it itself waived off this sum. It is also argued that the amount of Rs.74,267/- is on lower side and not as per the provisions of the Act of 2016. It is also argued that terms of pre-drafted conveyance deed were unfair and one sided and in support of his contention, complainant relied upon paras 6.7 and 7 of the judgement of the Hon'ble Supreme Court in Civil Appeal No.12238 of 2018 titled "*Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Ranghvan*", wherein it has been held that *"A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder..."*.
10. Complainant also relied upon Judgement of Hon'ble Bombay High Court in the matter of "*Neelkamal Realtors Suburban Pvt. Ltd. and ors. Vs. Union of India and Ors.*" (OS Writ Petition No.2737 of 2017) while dealing with Section 18(1)(b) of the Act of 2016 it has been held that the

requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment, but has not received possession of it. Thus. Respondent no.1 is liable to pay interest for every month of delay till the date of handing over possession of the apartment.

11. On the other hand, respondent no.1 argued on the lines of his reply and stated that due to Covid-19 pandemic the delay has occurred and respondent no. 1 be exempted from payment of interest to complainant for this period. It is further argued that respondent no.1 had paid Rs.74,267/- as delayed compensation which has been paid/adjusted and accepted by complainant without raising any objection. It is also argued that respondent no.1 applied (Annexure R-8) for issuance of occupation certificate on 08.07.2020. If this Authority is going to award interest for the period of delay in handing over possession then the same amount of Rs.74,267/- be waived off from the awarded interest.

12. The undersigned considered the rival contentions of both the parties and also perused the available record of this case.

13. Respondent no.1 argued that due to covid-19 pandemic delay in handing over possession of the apartment has occurred and relied upon various circulars of Ministry of Finance, Ministry of Housing and Urban Affairs, Maharashtra Real Estate Regulatory Authority and this Authority declaring Covid-19 pandemic as '*force majeure*'.

14. Complainant has also placed on record order dated 03.02.2025 passed in Appeal No.23 of 2024 titled "Hero Realty Pvt. Ltd. Vs Rohit Goyal and anr." and connected Appeal No.28 of 2024 wherein force majeure period of four months on account of Covid-19 awarded in the matter of 'Hero Realty Pvt. Ltd. Vs Arun Premdhar Dubey' has been dealt with and both these Appeals No.23 and 28 of 2024 filed by respondent no.1 were

dismissed by Hon'ble Appellate Tribunal, Punjab vide common order dated 03.02.2025. It is noteworthy that facts of this complaint and that of '*Rohit Goyal Vs Hero Realty Pvt. Ltd.*' were similar in nature.

15. It is a matter of record that Hon'ble Real Estate Appellate Tribunal, Punjab vide its order dated 22.08.2022 in Appeal No.100 of 2021 titled as "*Hero Realty vs Arun Premdhar Dubey*" held that due to *force majeure* on account of Covid-19, "*a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed*". In view of above position the period of 4 months of *force majeure* has to be excluded from the period of delay in handing over possession to the complainant. I order accordingly.

16. As per clause 7.1 of the agreement for sale dated 12.09.2018 possession was to be delivered on 13.01.2020. Annexure-10 attached by respondent no.1 with his reply is completion certificate dated 12.01.2021 of Towers T3, Tower T4, Tower T5 and Tower T6. As per allotment letter dated 07.09.2018, complainant was allotted 2 BHK residential Unit No.T-05/1103 on 11th floor in Tower-05. Annexure -A 11 is offer of possession dated 14.01.2020 addressed to complainant to take physical possession of the said apartment. It is the admitted case of the complainant himself in his complaint that he took possession of incomplete flat on 03.07.2021.

17. "Occupancy Certificate" has clearly been defined in (zf) which reads as under:-

"(zf) "*Occupancy Certificate*" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civil infrastructure such as water, sanitation and electricity."

18. Till date respondent no.1 has not been able to place on record Occupancy Certificate regarding this apartment.

19. Thus, it is established on record that there was delay in handing over possession of the apartment to complainant. Accordingly, respondent no.1 is liable to pay interest from 13.01.2020-the agreed date of handing over possession as per Clause 7.1 of agreement for sale 12.09.2018 till 03.07.2021-the date when possession was taken by the complainant, minus four months due to Covid-19, as held in para no.15 above.

20. The next objection raised by respondent no.1 in para no.21 of his reply that out of the sum of Rs.51,11,278/- paid by complainant, amount of Rs.5,51,998/- has been paid by complainant as GST and has been deposited with government authorities. Thus, no interest is to be paid on GST amount of Rs.5,51,998/-.

21. However, the Hon'ble High Court of Punjab and Haryana in RERA Appeal No. 95 of 2021 (O&M) titled "*Emaar India Limited (formerly known as Emaar MGF Land Limited) Versus Kaushal Pal Singh alias Kushpal Singh*" and other connected appeals held as under:-

"10. On a careful reading of the proviso to Section 18(1) of the 2016 Act, it is evident that an allottee who does not intend to withdraw from the project, is entitled to be paid by the promoter the interest for every month of delay till the delivery of possession at such rate as may be prescribed. It is in the nature of damages or compensation for delay in delivery of the possession of the apartment/unit. Such interest for every month of delay is payable on the entire amount paid by the allottee. The interest has been defined in Section 2(za) of the 2016 Act. Explanation(i) of Section 2(Aa) of the 2016 Act provides that in case of default, the interest is payable by the promoter to the allottee at the rate equal to the rate of interest as shall be prescribed in this behalf. Explanation (ii) Section 2(Za) of the 2016 Act provides that the interest shall be payable to the allottee from the date the promoter received the amount or any part thereof. The proviso to Section 18(1) of the 2016 Act clearly enables the authority to compensate the allottee for the losses suffered on account of delay in delivery of possession by the promoter. **The interest shall be payable on the complete amount paid by the allottee to the promoter.** The learned counsel representing the appellant has failed to draw the attention of the Court towards any statutory provision prohibiting the payment of interest on the amount of H-VAT, GST, EDC etc. under proviso to Clause (1) of Section 18 of the 2016 Act to the allottee. Section 2(g) of the 1975 Act defines the external development works. Section 3(3)(a)(ii) of the 1975 Act provides that the owner who wants to

develop his land into a colony is liable to pay the proportionate development charges. In other words, the liability to pay the amount is on the licensee (owner-promoter)".


22. In view of above legal provision it is held that complainant is entitled to interest on all the amount deposited by him.

23. As a result of above discussion, this complaint is allowed and respondent no.1 is directed

23.1 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 complainant with effect from 13.01.2020 till 03.07.2021 minus four months as decided in para no.16 above within ninety days as stipulated in Rule 17 of the Rules of 2017.

23.2 However, it is made clear that amount of Rs.74,267/- already paid by respondent no.1 to complainant towards interest for the period of delay in handing over possession be set off from the due interest awarded to complainant.

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


(Binod Kumar Singh)
Member, RERA, Punjab